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ABSTRACT

This collection of articles forms the second of two volumes designed to impart to readers some sense of the crucial importance of what is and will be happening to the indigenous peoples of North America. "The Present and Future Status of American Indian Nations," by Robert T. Coulter argues from the perspectives of ideology, power, law, and human rights that the political existence of Native American nations and their governments, in relation to the United States and other governments, is legally and practically tenuous. "Who Will Govern Indian Country?" by Rudolph C. Ryser examines theoretical and practical jurisdictional problems related to the existence of independent sovereign states within another sovereignty and suggests that intergovernmental agreements recognizing tribal governments as the sole governing authority on reservations would eliminate current jurisdictional chaos. "The Political Economy of Radioactive Colonialism," by Ward Churchill and Winona LaDuke discusses the "new colonialism" (the expendable relationship of indigenous peoples to multinational resource-extraction corporations); and suggests that tribes must choose between Third World "development" and a Fourth World strategy of disengagement. The remaining articles address more specific issues and events such as the Pit River Indian land claim dispute, the Western Shoshone landrights struggle, the "Navajo-Hopi Land Dispute" and related inter-tribal conflicts, the Garrison Dam related land dispute, and the process of implementing Indian Treaty Fishing Rights. (SV)

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Critical Issues in Native North America – Volume II

Edited by Ward Churchill

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Critical Issues in Native North America
Volume II

Edited by Ward Churchill

Copenhagen
February 1991

Dedication

For Fools Crow and Matthew King, who led with their lives.

Cover Illustration: Genocide in Arizona? Big Mountain Diné elder Katherine Smith takes up arms to defend her land and traditional way of life. From a drawing by Carolyn Brooks.

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What Every Indian Knows

Auschwitz ovens
burn bright
in America
twenty-four million
perished in the flame
Nazi
not a people
but
a way of life
Trail of Tears Humans
ends in Oklahoma
an Indian name for
Red Earth
Redder still
soaked in blood
of two hundred
removed tribes
the ovens burn bright
in America
Ancestral ashes
sweep the nation
carried in
Prevailing winds
Survivors know
the oven door stands wide
and some like mouse
cat crazed and frenzied
turn
and run into the jaws
at night
the cat calls softly
to the resting
us

– *Pam Colorado*

Note: There is great debate among scholars about the actual population decline of Native Americans, in the civilization of the West. The Figure 24 million is a conservative estimate of the American Indian Movement.

Preface

The Sell-Outs
Notes for a Speech at Alfred University

by Russell Means

American Indians are at a crossroads as important as any which has ever confronted them. The decisions taken over the next three to five years will determine whether or not Indian people have a future in North America. Making the right choices and taking the right positions can lead to a genuine rebirth of our sovereignty, our self-determination, the continuation of our traditions in meaningful ways. Making the wrong choices and taking the wrong positions will lead unerringly to our final subordination to the political and economic domination of the United States and, ultimately, to our final liquidation as self-identifying – or even identifiable – peoples. We are facing true genocide.

There is an ugly trend afoot in Indian Country today. It is the trend of the traitor and the sell-out. Of course, ever since the colonial process began in this hemisphere there have been those among us the invaders have been able to buy, coerce or dupe into working against their own people. This is, after all, a classic tactic of colonialism. It has always been extremely damaging to Indian people, undermining our unity, confusing what would otherwise be very clear situations. The problem has been with us since the first European set foot on the shores of the Americas. But never before has it been as institutionalized, sophisticated and refined as it has become today. Never has it been so rampant, never has it involved so many self-proclaimed "American Indian leaders," and never have the stakes been higher than they are right now. Quisling Indians are presently in position to foreclose on our collective future, not just that of the peoples indigenous to North America, but *all* peoples.

There are a number of individuals and organizations which could be used as concrete examples in this regard, but for the moment I'll name no names. Let's just say that where the shoe fits, it should be worn. In any event, a great many people have come to perceive such people and their organizations as being unswerving champions of Indian rights. Yet, in truth, each frames its activities within an acceptance of the unfounded premise that the United States government has a legitimate right to exercise a sovereignty over American Indian nations superior to that of the Indian nations themselves. In many instances, sell-outs have demonstrated a willingness to accept the

assertion that individual states of the union rightfully hold jurisdictional prerogatives over Indian nations. Further, they makes it a matter of policy to refuse to represent any entity other than a federally-approved "tribal government," a matter which not only leaves traditional councils of elders and other legitimate Indian governing bodies out in the cold, but tangibly undermines their authority *vis à vis* the Vichy governments installed by the U.S. through the Indian Reorganization Act of 1934.

This is the exact opposite of a posture which would reinforce American Indian sovereign rights. Sell-outs will tell you they adopt only "responsible" positions, as if using this buzz word somehow reconciles what they're doing and makes it okay. You are obligated to demand that they explain to whom or what it is they are responsible. In the end, the only possible answer is that they hold themselves responsible, not to Indian people – whom they habitually refer to as being "irresponsible" – but to the federal government, to federal hierarchy, federal law and federal order. Their business is creation of the appearance of legitimacy for U.S. Indian policy by extending themselves as "full participants" in the process, establishing the facade of Indian acceptance of the federally-imposed "rules of the game." In exchange, their firm receives stable funding and ample favorable publicity, they are personally subsidized to the extent that they can live comfortably while most Indians starve, they are accorded the ego gratifying "respect" of their colonizers, and are placed in slots where they are able to exercise a degree of government-backed power over the fate of other Indians.

This is why, every time sell-outs "wins a major case," or get a "progressive statute" passed, Indians lose in a big way. And it doesn't matter where they litigate or on what issue. In Maine, they brokered a "settlement" of indigenous land rights which paid pennies on the dollar for what the Indians were really owed, and passed clear title to the government in exchange. The fact that the bulk of the Pennobscots and Passamaquoddys whose land it was didn't want a settlement of this sort was of no concern to the sell-outs. They actually helped the government find "responsible Indian leaders" who could be counted on to cooperate with what the U.S. wanted and needed to have happen, whether the people they supposedly represented agreed or not. With variations, the same scenario played itself out in Massachusetts with another celebrated "win," allegedly "in behalf of" the Wampanoags. The list of comparable examples is a long one, adding up to virtually every such case ever taken to court. The feds walk out with their agenda met in full; the Indians walk out with whatever the feds are willing to fork over to put "a good face" on things.

Right now, at this very moment, sell-outs are brokering away the rights – and the land base – of the American Indians, Inuits and other indigenous

peoples of Alaska. Overwhelmingly, the people their wish to retain their lands, their lifeways, their rights as nations. The federal government desires their land and the resources within their land, and wants at all costs to avoid recognizing their rightful status as nations. Sell-outs are busily engineering a "compromise" wherein the indigenous peoples will be organized as corporations, divested of title to 95% of their land and the mineral rights which go with it, and paid a combination of compensation for land loss and royalties on mineral extraction in exchange. The lifeways of the landbased traditional people affected will, of course, be irrevocably changed if this plan is implemented. This is no compromise! It is fulfillment of the federal agenda, lock, stock and barrel. And it is being done by an Indian organization, claiming to act in the name of Indian rights.

Sell-outs will tell you they are merely being "realistic," that it is far better for Indian people to receive at least some compensation for their losses than to be left completely uncompensated. This gains Indians "something," they argue, whereas in the alternative they'd receive nothing at all; selling out, so the story goes, gets Indian people the best that can be gotten. The question which must be asked of this superficially plausible proposition is, "How the hell would they know?" When in the past 20 years have Indians been able to play out the hand of their rights and their sovereignty on any given issue with the intervention of some sold-out psuedo-Indian entity, brimming with "responsibility," bent upon "mediating" the situation, finding a "reasonable solution," taking the federal government off the hook while leaving Indians holding an empty (or near empty) bag? When have Indians been able to play out their full hand of options, in the international community for instance, without a cluster of sellouts trotting up to offer a more "reasonable solution?" Never in this century.

American Indians confront a surplus of enemies in these perilous times. In the end, we will have to face and defeat every one of them if we are to survive and regain our rightful place in the family of nations. In order to do this, we will have to form alliances based upon common understandings and common interests with other peoples the world over. This is true, whether or not these other peoples happen to be American Indian. By the same token, in order to accomplish what we must accomplish, we will have to deal with those who seek to block our initiatives. This too is true, regardless of whether the guilty parties are Indian or non-Indian. In fact, our first priority, if we are to move forward to a brighter future rather than final oblivion, should be to clean up our own nest. Then we can proceed in unity to do what we must do. In other words, we must eliminate the element of traitors, sell-outs and other scum from amongst ourselves, the sooner, the better. You might even say it's long past time to get the job done...

Introduction

Further Critical Issues in Native North America

This is the second of two volumes on critical issues in Native North America. Much has happened in the year-and-a-half since release of the first volume, notably the emergence of an extremely volatile situation within the Mohawk Nation on both sides of the U.S./Canadian border. This has involved organized gambling and smuggling operations, multifaceted factional infighting with all sides claiming to represent the tradition of Mohawk sovereignty, arson and the physical occupation of various locations both on and off the impacted reservations, and a series of armed confrontations where Indian has faced Indian, and Indians have faced the armed might of the federal government, the State of New York, and the Province of Quebéc. To date, at least two Mohawks and a Canadian police officer have died in the firefights which have marked these events, an editor of the *Akwesasne Notes* newspaper has been charged with murder, and a U.S. helicopter has been shot down over Mohawk territory. Several gambling facilities and the offices of *Akwesasne Notes* have been burnt to the ground.

Even as these words are written, an armed group of Mohawk warriors are besieged by the military upon a bridge they have occupied in Canada. The violence shows signs of escalating rather than abating, a matter which threatens the stability not only of Mohawk, but of the Haudenosaunee (Iroquois Six Nation Confederacy) of which Mohawk is a part. Such circumstances have had the not unnatural effect of preempting efforts by those who had agreed to do so to write a thoughtful essay concerning the difficulties experienced by the Mohawks in exercising their sovereignty as an indigenous nation, the boundaries of which straddle the borders of two major nation-states. At the same time, it remains far too early for anything resembling a definitive analytical article to be written concerning the ongoing dispute within the Mohawk Nation itself.

Relatedly, albeit in far more general terms, essays have been included by Tim Coulter and Rudy Ryser, taking up the critical issue of indigenous governance in North America today. Much of what they have to say can and should yield a certain utility in terms of clarifying many of the issues now evident amongst the Haudenosaunee and elsewhere. It is hoped that readers may proceed on this basis to unravel events attending questions of sovereignty and governance as they continue to emerge in the days ahead.

From there, Winona LaDuke and I extend the analysis advanced by Jim Harding in the first volume, with regard to the "radioactive colonization" of indigenous nations in Canada, to include the same phenomenon within the U.S., both historically and topically. Considered on a continental basis, and within the context of renewed state interest in application of "the friendly atom" to the meeting of energy requirements within advanced industrial societies, the matter of uranium mining can only be considered as one of the most critical of all issues confronting the native peoples of North America.

Proceeding in sequence, M. Annette Jaimes next elaborates the contemporary history of struggle which has gone into the still unresolved Pit River Indian Land Claim in northern California, and relates it to more topical events such as the infamous "G-O Road Decision" of the U.S. Supreme Court. This is followed by Glenn Morris' succinct historical and political examination of the situation of the Western Shoshone Nation and its traditional homeland, Newe Segobia, a matter explored in passing by Bernard Nietschmann and William LaBon in Volume I. Winona LaDuke then returns to update the material on the White Earth Land Claim she presented in the previous volume.

Next, we move to my essay summarizing the context of resistance to genocidal forced relocation undertaken by the traditional Diné (Navajo) people of the Big Mountain area of the "Navajo-Hopi Joint Use Area" in Arizona. This fight for survival – generated by the dominant society's quest for readily accessible low sulphur coal and other mineral resources, and exemplifying the colonialist orchestration of Indian versus Indian conflict addressed by Russell Means in his preface to the present collection – has been ongoing since 1974, and intensified steadily during the '80s. At present, now end to the conflict has come into view.

Terri Berman provides an illuminating companion article, exploring the impact of compulsory relocation upon the Hidatsa, Mandan and Arikara peoples on the Fort Berthold Reservation in North Dakota, nations whose territory was sacrificed, not to the ravages of strip mining such as is envisioned at Big Mountain, but to flooding brought on by construction of the Garrison Dam.

In the final essay, Faye Cohen then takes up the status of fishing rights among the treatied nations of Washington state and Wisconsin, a matter which holds considerable import, not only with regard to questions of indigenous sovereignty, but to attempts by native people to sustain or develop viable economic alternatives to the "benefits" of industrialization, dams and mining. Here too, the stakes are very high, as is witnessed by the intensity of non-Indian resistance – physical, political and legal – to the exercise of indigenous rights to fish over the past quarter-century and more.

As was stated at the outset of the first collection, "It is impossible to address all the critical issues currently impacting Native North America in a single volume." Obviously, the same can be said for two volumes. It is to be hoped, however, that what *has* been included in these two small books bears a utility beyond its immediate scope, not only acquainting readers with much about which they might otherwise have remained unfamiliar, but allowing them with insights into broader trends within the U.S. and Canada, providing them the tools necessary to apprehend the meaning of other problems not directly addressed herein. Perhaps more importantly, it seems possible that the two volume set will impart some sense of the crucial importance of what is and will be happening to the indigenous peoples of North America. If so, then the books have amply served their purpose.

– Ward Churchill –
Boulder, Colorado
September 1990

The Issues

At night when the streets of your cities and villages are silent and you think them deserted, they will throng with the returning hosts that once filled them and still love this beautiful land. The White Man will never be alone. Let him be just and kindly with my people, for the dead are not powerless. Dead, did I say? There is no death, only a change of worlds.

– Seattle –
Suquamish Leader
1853

The Present and Future Status of American Indian Nations

by Robert T. Coulter

The political and legal existence of American Indian nations is as insecure today as it was a generation ago. (References to Indian nations is intended to include Alaska native nations and tribes.) The rising levels of education and years of sporadic political activism have brought about remarkable changes in the political climate and the social and economic relationships in American Indian reservation communities but have not affected the legal status of the nations. The reasons for the uncertain status are not well understood. Greater awareness and understanding of the impediments and threats to the continued existence of North American indigenous nations could perhaps help native leaders and attorneys plan and work more effectively to preserve the American Indian nations. It may also help non-Indian policy makers to understand how native cultures and societies are being threatened and even destroyed.

This essay begins with two observations. First, the political existence of indigenous nations and their governments, in relation to the United States and other governments, is tenuous both legally and practically. Second, there is the great difference between the ideals and aspirations of tribal existence, and the difference between actual power, ability and the willingness of native governments to exercise or defend their powers as American Indian nations. This is usually summed up in the word "sovereignty." Looking to the future, we suggest that the existence and well-being of native nations will depend upon securing the right of tribal governments to exist, act and exercise the power and freedom to which they are entitled. Tribal governments must come to grips with the national problems and threats to their existence and the local problems which can weaken and incapacitate them.

The future of North American indigenous nations is likely to be shaped, at least in part, by emerging international law and human rights pressures. The standard-setting activity of the Untied Nations Working Group on

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This essay was originally prepared for presentation at a symposium on American Indian Self-Governance at Evergreen State College, Olympia, WA, on October 15, 1988. A variation has appeared in Minugh, Carol J., Glenn T. Morris and Rudolph C. Ryer (eds.), *Indian Self-Governance: Perspectives on the Political Status of Indian Nations in the United States of America*, Center for World Indigenous Studies, Kenmore, WA, 1989.

Indigenous Populations and of the International Labor Organization may have an important impact upon U.S. policy and law regarding the future existence and powers of American Indian nations.

The Tenuous Existence of Native Nations

Indian nations have proven to be extraordinarily resilient and durable as social, political and cultural entities. Cultural, political, religious, linguistic and other ties have remained so strong that hundreds of tribes continue to exist and grow. Practically all American Indian and Alaska native people place the continued existence of the nation or tribe as one of their highest priorities. Yet tribal existence as political and legal entity recognized by other governments has remained uncertain. This tenuous, even doubtful status is one of the most troubling and fundamental problems affecting indigenous nations in the U.S. American Indian and Alaska native tribes lack any real, protectable right to exist under the laws of the United States. They exist legally only at the sufferance or will of the U.S. Congress.[1] This is not to say they have no moral right to exist or no right to exist recognized in international law. It is, however, the law of the United States, which in general controls the affairs of native people in the U.S.[2]

The U.S. Constitution contains no provision establishing or protecting the existence of indigenous nations or any relationship they may have with the United States government. Congress has recognized Indian nations and provided for their existence through the treaty making process and since 1871 through the enactment of legislation. Under provision of the first article of the constitution, the existence of a treaty constitutes the recognition of an Indian tribe as a nation and thus creates a legal right, at least in theory, enforceable in the U.S. courts. The legislation, if unchanged, protects many, perhaps even most, Indian nations' existence.[3]

The Indian Reorganization Act of 1934 and the Oklahoma Indian Welfare Act, are examples of legislation which provide for the creation and recognition of Indian governments. There is nothing, however, legally preventing the U.S. Congress from repealing these statutes, abrogating these treaties or passing new legislation. New legislation could terminate or withdraw recognition of any or all native nations. There is some authority, however, for the argument that congress cannot take away by legislation property rights which it has created and vested in Indian nations. Legislation which purports to do so could be declared unconstitutional. It may be argued that congressional action recognizing the existence of an Indian nation and its government creates vested rights which cannot be taken away by congress, consistent with the U.S. Constitution.[4] Whatever the merit of this argument, there is no precedent to this effect.

The courts have not established any legal doctrines providing for the right of American Indian nations to exist or be recognized by the federal government. On the contrary the courts have created the doctrine of "plenary power."[5] According to this doctrine congress is said to have practically unlimited power to pass laws concerning Indian nations, their property and affairs. The most notable area of federal control over indigenous nations is jurisdiction of Indian reservations. Perhaps no other issue is as important to native governments as the question of jurisdiction, that is, who has the power to govern and manage Indian affairs on Indian land. Under the plenary power doctrine there are no restrictions upon congress' authority to limit or take away the powers of native governments or to transfer those powers to the federal or state governments. Beginning in 1832 when congress first began to assert federal criminal jurisdiction over Indian territories, congress has enacted countless laws providing for federal and state governments jurisdiction on Indian lands.[6] These laws provide forevermore severe limitations on the powers of native governments to rule their people and lands. Though the power of tribal governments to exercise jurisdiction is without question the most important attribute of any tribe, there had never been any recognized legal right to preserve and exercise that jurisdiction.[7]

The shaky position of American Indian nations in the United States political and legal system is not simply the result of the natural order of things or of some unfortunate turn of history. Rather it is on account of the denial of protectable legal rights to exist and exercise governmental powers. There can be little wonder that, where great economic resources are at stake and where great issues of political power are at stake, native peoples are at a terrible disadvantage. The weakness of some modern day native governments is a consequence of the destruction or suppression of indigenous nations and governing structures by the federal government. On some reservations it is clear that the federal government literally imposed a constitution or form of government which was not desired by the majority of the tribe. This basic vulnerability on the part of American Indian nations has rarely been pointed out or discussed. Lawyers seldom challenge this denial of basic rights of the indigenous peoples they represent. Most leaders of indigenous nations, though they know that the people's existence may be insecure, do not recognize the absence of a basic right to exist.

Even today, many, perhaps most, American Indian nations have great difficulty resisting federal manipulation and control. The nations are dependent upon the goodwill of the federal government for their very existence. The poverty and severe social problems (alcoholism, suicide, violence, poor health and low educational achievement) which exist on most reservations means native governments and individual members are not in a position to

risk the withdrawal or loss of federal funds should they come into conflict with the federal government. All of these factors contribute to the extraordinary difficulties North American indigenous nations face in protecting and strengthening their own governments and the relationships of these governments to their state and federal counterparts.

The Gap Between Ideals and Performance

There is considerable difference between the ideals and aspirations of "tribal sovereignty" and the actual power, ability and willingness of Indian nations to exercise their rights and powers as nations. Probably every Indian and Alaska native people asserts the position that it is a sovereign government with inherent rights of self-government and/or self-determination. Many indigenous peoples regard themselves as rightly having all the powers of any nation, subject only to the limitations and enumerations of powers prescribed in their own constitutions or traditional laws. Some peoples, and at various times probably most of them, have taken the position that they are indeed nations on a basis of legal equality with the U.S., entitled to full independence and self-determination and not subject to the jurisdiction of the Unites States except as prescribed by treaties. These nations regard their relationship with the United States and other nations as being regulated by international law and treaty, and all assertions of federal power over them as unlawful acts in violation of their sovereignty. No doubt many native nations which today accept their legal position as subject to U.S. jurisdiction regard themselves as nevertheless entitled to full nationhood and sovereignty should they be able to achieve it.[8]

It is not a surprise that there is difference between ideals and reality. In regard to the status of American Indian nations this difference is related to the denial of fundamental rights and may significantly affect the future of native governments. One of the primary reasons for the restrained approach to sovereignty which appears to prevail among tribal governments is that most American Indian leaders understand that they lack the fundamental legal right to protect indigenous national interests. It has long been perceived by Indians that their nations are subject to practically unlimited federal power, and that tribes ordinarily are not able to protect themselves from this power through legal means. Native governments are frequently unwilling to exercise or to protect rights which in fact they have because doing so could bring about adverse federal governmental action to which their nation would have no defense.[9] The fear of termination and the fear of legislation taking away governmental powers or taking away land rights is often a factor in dissuading a native government from taking vigorous action which it has a clear legal right to take.

A few years ago for example, the U.S. Commission on Civil Rights under the Reagan administration sought to distract criticism of the administration's civil rights performance drawing attention to alleged civil rights abuses by Indian governments. The commission identified the claim that American Indian governments often lack "separation of powers." Attention was called to the alleged lack of complete separation between tribal courts and tribal councils. The Bureau of Indian Affairs began urging separation of powers on native governments, and programs were funded to train councils and courts on separation of powers and judicial independence.[10] Fear grew among native leaders that unless separation of powers was soon implemented by their governments there would be new legislation taking away or limiting the powers of tribal courts. American Indian governments were thus pressed to fashion themselves more in the image of non-Indian governments. This was accomplished not because this was the will of the peoples in question, but because political forces from outside seemed to demand it. Indeed legislation has been introduced in congress to subject tribal court decisions to federal review. If enacted, congress would impose yet another major reduction of Indians' right to govern their own affairs.

Even for the willing and highly motivated American Indian leader there are almost overwhelming obstacles to sovereignty and to seeking enhanced status or greater sovereignty for their nation's government. The most notable obstacle is the lack of funds to mobilize people and political clout behind the goal of greater indigenous national powers. Poverty and lack of other resources affect an inordinately large proportion of the population on most reservations. In addition, social problems and political impediments, mentioned earlier in this essay, make it extraordinarily difficult for even the most committed and idealistic leaders to pursue and vindicate their ideals and aspirations.

The great gap between the rhetoric, ideals and aspirations of tribal status and the extent which these ideals are realized is significant because it is the reflection of a dilemma that faces tribal governments. The dilemma is the choice between: 1) exercising recognized rights and seeking greater rights of tribal government at the risk of losing vital funds and programs and suffering crippling federal legislative action or, 2) on the other hand, suffering the continuing diminution of national status and powers of self-government while seeking to maintain the goodwill of the federal government along with such programs and funds as it can provide. This dismal dilemma gives little hope for the future well-being of American Indian nations. One way that the dilemma may be changed may be the creation of a right to exist and a right to self-government which is not dependent upon the good will of congress.[11]

The present status of North American indigenous nations is the result of the constant erosion of their governmental rights by U.S. courts and congress, and the steady, persistent efforts of the American Indian nations themselves to strengthen and maintain their existence and governments. If this process continues its present course, we might well see native national governments of greater and greater sophistication and institutional strength. These governments will, however, be less and less distinctively native in philosophy or function, and exercising less and less power or jurisdiction. It is essential for American Indian nations to overcome social problems and to strengthen their communities from within. This will help to build the capacity and willingness to preserve the nations. This, however, will be futile unless effective action is taken to correct the national denial of basic rights to exist and to self-governing.

For generations, Indians have sought to participate in the international community and to have resort to the processes of international law as a means for resolving their disputes with the U.S. and other countries of the Americas. Most indigenous nations have never forgotten their international legal status which was evidenced by the treaties made with them by the United States and by the British Crown, as well as other countries of Europe. As the North American colonies grew in strength, American Indian participation in the international community was cut off, and their status as nations was increasingly denied or ignored. Nevertheless, many native nations have persisted through the years in seeking access to international law and to international organs.

The Cayuga Chief, Deskaheh, for example traveled to the League of Nations in Geneva, Switzerland in 1923 and 1924 seeking to address that body about the treatment of his nation by the government of Canada. Though he was not permitted to address the league, Deskaheh's diplomacy in League circles attracted much attention and had been remembered to this day in the diplomatic community of Geneva.[12] Many American Indian nations approached the United Nations without notable success. It was not until the mid-1970s that, with the growing role of non-governmental organizations in the human rights work of the United Nations, Indian voices began to be heard.

A conference of non-governmental organizations at the United Nations in 1977 devoted to human rights problems affecting Indians in the Americas drew world-wide attention to the grave human rights problems of American Indians and of indigenous people everywhere. Representatives of tribal governments began to attend meetings of the U.N. Human Rights Commis-

sion and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. Native American representatives made statements to these bodies and provided documents and information that fostered a strong interest in the human rights issues affecting their peoples. Formal complaints of human rights violations were filed by a number of native governments with the United Nations, and a number of Indian organizations achieved formal consultative status as non-governmental organizations with the United Nations.[13]

Indigenous representatives from the U.S., Canada and many countries in Central and South America initiated the process of developing international human rights law because of the almost universal denial of basic rights by the domestic law of the various countries. Prominent among the fundamental rights denied by the domestic law of the the United States and other countries were the right to exist, the right to be self-governing, the right of indigenous nations to own and hold property with full legal protection and the right to enforce the treaties.

As a result of American Indian and other indigenous peoples' effort at the United Nations a Working Group of Indigenous Populations was created, in 1981, by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The mandate of the Working Group is to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations and to give special attention to the evolution of standards concerning the right of indigenous populations.[14] American Indian representatives have urged the Working Group from the beginning to adopt a declaration of principles which would recognize the fundamental rights of Indian nations and other indigenous peoples. In various draft declarations submitted to the Working Group, the right of self-determination is a prominent element. As the issues of indigenous rights have moved from obscurity to center stage at the United Nations, understanding and support for far-reaching definitions of indigenous rights has grown.

At the Working Group's 1988 session, the Chairman of the Working Group, Erica-Irene Daes, prepared and submitted a complete *Draft Universal Declaration on Indigenous Rights*.[15] It is hoped this Declaration of Principles will be ready for adoption by the General Assembly of the United Nations in 1992. This *Declaration of Principles* is important for our purposes because of the principles relating to the right of indigenous people to exist and be autonomous. The draft *Declaration* provides that the General Assembly of the United Nations solemnly proclaims the following rights of indigenous peoples and calls upon all States to take prompt and effective measures for their implementation. Part II of the *Declaration* sets out the rights that are of concern to us here:

3. The collective right to exist and to be protected against genocide, as well as the individual rights to life, physical integrity, liberty and security of person.

4. The collective right to maintain and develop their ethnic and cultural characteristics and identity, including the right of people and individuals to call themselves by their proper names.

5. The collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or identity, of any form of forced assimilation or integration, of imposition of foreign life styles and of any propaganda directed against them.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations of their cultures, including archaeological sites, artifacts, designs, technology and works of art, lie with the indigenous people of their members.

The other important rights contained in the draft *Declaration* that are of relevance to this paper concern self-government of autonomy:

23. The collective right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

24. The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.

25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

These draft principles are particularly important for our consideration here, because they proclaim rights which are not in any fundamental way recognized in the U.S. legal system. Many of these rights are in fact provided for, at least for the time being, by various acts of congress, but nothing prevents congress from enacting new legislation taking away these rights. In the United States, these are not rights in the sense that they can be protected against adverse action by the U.S. government itself. The draft *Universal Declaration of Principles*, on the other hand, calls upon all nations to respect

and implement these rights. They are not to be matters simply of governmental grace or whim.

It is clear that the right to autonomy included in the draft declaration falls far short of the full right of self-determination which has been almost universally demanded by indigenous representatives. With the exception of the Haudenosaunee (Six Nations Iroquois Confederacy), however, virtually none of the indigenous representatives appearing before the Working Group have actually expressed the desire to exercise the full scope of self-determination, that is the right to complete independence or secession from the nation-state presently dominating them. In any event, relatively few indigenous nations have now, or are likely to have in the near future, the actual capacity to assume independent status. Few indigenous nations have the capacity or the willingness to exercise anything more than the right of autonomy as spelled out in the draft *Declaration*. Certainly some indigenous nations will continue to seek the full political right of self-determination including the right to independence. For the present time, however, it is clear that the right of autonomy proclaimed in the draft *Declaration* goes far beyond what any present day state now regards as a right of American Indian nations.

At the same time, the International Labor Organization has undertaken to revise its *Convention No. 107 on Indigenous and Tribal Populations*. That *Convention* of 1957 has been widely criticized as assimilationist. It has however, been the only actual convention or treaty in force relating to the rights of indigenous peoples. It has not been applied in the U.S. because the United States has not ratified *Convention 107*. However the process of revising the *Convention* has been a process of enumerating and defining a broad set of basic rights, having in mind that the *Convention* would be ratified by the largest possible number of nations throughout the world including perhaps the United States. Because the revision process involves representatives of governments, employers and labor organizations from throughout the world, the drafting and revision process constitutes an important standard setting activity.

The draft of the revised *Convention*, as it now stands, is clearly premised on the continuing existence of Indian or indigenous peoples or populations and it refers repeatedly to their collective rights. It does not, however, deal as explicitly with the collective right to exist and the right of self-government as does the draft *Declaration* of the Working Group. For example, the most relevant provision of the present draft of revised *Convention 107* is Article 8, paragraph 2 which reads as follows:

> These [peoples/populations] shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or intentionally recognized human rights.

The question of the right of self-determination or autonomy has not yet been resolved, and no provision has been drafted thus far.

Conclusion

It should be noted in closing that it is far from clear how the right of American Indian nations to exist and their right to self-determination should be established as protectable rights in federal law. The only positively sure way to establish rights which are protectable against acts of congress is to amend the U.S. Constitution and provide for such rights explicitly therein. This, however, does not seem very likely and may be undesirable from a political point of view. International law is applicable in U.S. courts, and ratified treaties are likewise the "Supreme Law of the Land," but both are subject to being overridden by an ordinary act of congress. Thus, rights established by international law or through international treaty even though ratified by the United States are not in fact protectable as against contrary acts of congress.

Nevertheless, the development of international legal standards for the protection of the right of tribes and nations to exist and to be self-governing are likely to be very important because of their normative and moral effect. It may not always be necessary to provide for formal, technical protection of basic rights where those rights are strongly and universally agreed to exist. It would not be necessary, for example, to provide in the constitution for the outlawing of slavery. An overwhelming and permanent consensus exists that there is a universal right to be free from slavery, and there is virtually no risk that the U.S. Congress would violate that right regardless of any technical provisions of the constitution.

The process of developing international human rights law is indeed part of a greater and more important process. This process would develop a permanent, irreversible and universal consensus about the right of American Indian nations to exist and govern themselves. It is the development, reinforcement and implementation of such universal consensus to which many indigenous leaders are devoting themselves. This, they believe, would be one of the best ways to assure the continued existence and self-government of their people. If such a universal consensus is achieved, I think it will represent and bring about not only a fundamental change in the future status of American Indian nations and tribes, but it will also represent an historic milestone in the development of our human civilization.

Notes

(prepared by the editor)

1. This is brought out most clearly in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

2. See Cohen, Felix S., *Handbook on Federal Indian Law*, U.S. Government Printing Office, Washington, D.C., 1942 (revised and reprinted by the University of New Mexico, Albuquerque, 1971).

3. For further readings on this topic, see Indian Law Resource Center, *Rethinking Indian Law*, Committee on Native Struggles, NY, 1982. Also see Getches, David H., Daniel M. Rosenfelt and Charles F. Wilkenson (eds.), *Federal Indian Law: Cases and Materials*, West Publishing Co., St. Paul, MN, 1978.

4. In general, see Deloria, Vine Jr., and Clifford M. Lytle, *American Indians, American Justice*, University of Texas Press, Austin, 1983.

5. See specifically *United States v. Kagama*, 118 U.S. 375 (1886), and *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

6. The key Supreme Court opinions paving the way for this were *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Usually considered legal victories for Indians, the decisions created the fiction of indigenous nations being "domestic" to and "dependent" upon the United States, a matter which provided doctrinal rationalization for their subordination by the federal government.

7. This is spelled out in *United States v. Winnebago Tribe of Nebraska*, 542 F.2d 1002 (8th Cir. 1976).

8. For example, see DeLaCruz, Joe, "From Self-Determination to Self-Government," in Carol J. Minugh, Glenn T. Morris and Rudolph C. Ryser (eds.), *Indian Self-Government: Perspectives on the Political Status of Indian Nations in the United States of America*, Center for World Indigenous Studies, Kenmore, WA, 1989, pp. 1-14.

9. See Holm, Tom, "The Crisis in Tribal Government," in Vine Deloria, Jr. (ed.), *American Indian Policy in the Twentieth Century*, University of Oklahoma Press, Norman, 1985, pp. 135-54.

10. Interesting material on administration of justice in the reservation context may be found in O'Brien, Sharon, *American Indian Tribal Governments*, University of Oklahoma Press, Norman, 1989 (esp. pp. 201-7).

11. Many of the limitations inherent to the forms of tribal governance presently approved by federal authorities are discussed in Deloria, Vine Jr., and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty*, Pantheon Books, NY, 1984.

12. The activities of Deskaheh are covered in Akwesasne Notes (ed.), *A Basic Call to Consciousness*, Mohawk Nation via Rooseveltown, NY, 1978.

13. See Independent Commission on International Humanitarian Issues, *Indigenous Peoples: A Global Quest for Justice* (Zed Press, London, 1987), for a recounting of these developments.

14. See United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 2 (XXXIV) of September 8, 1981.

15. United Nations Document E/CN. 4/Sub.2/1988/25.

Who Will Govern Indian Country?

A Critical Issue in Native North America

by Rudolph C. Ryser

There are 177 independent, self-governing states in the world today. One hundred twenty of these states became independent in the last thirty years. States like Vanuatu and Nauru in the Pacific, Nevis-St. Kitts in the Caribbean and Belize in Central America are among those which became independent in only the last ten years.

From these numbers, we can tell that international agreements promoting decolonization and self-determination of peoples have had a profound affect on the geo-political shape of the world. More peoples live under self-governing statist structures now than at any time in human history as a result of what might be called "The Enlightened Period of Human Rights and Self-Determination of Peoples." We might conclude that virtually all people in the world are self-governing and free to choose their own social, economic political and cultural future. Despite appearances to the contrary, there is an estimated one-half billion people in the world who do not enjoy the full right to govern themselves. These are the people of what we now call the Fourth World. They are peoples of the original nations which speckle six continents and hundreds of islands. Peoples of the Fourth World make up nations which are under the control of both older and newer nation-states.

While there are scores of nation-states, there are more than three thousand nations in the world which are imbedded in the former. These nations are in the main under the control of a nation-state against their will, without their consent. These nations were once separate, independent and fully self-govering. Now they are either non-self-govering or partially self-govering nations dependent on the will and whims of independent nation-states. In many ways we can say these nations have become captives of the "state system." In the Peoples' Republic of China there are fifty separate and distinct nations including the peoples of Tibet, Manchuria and East Turkistan. The dominant nation-state population is made up of Han People, or people we call Chinese. The Han run and control the Chinese state.

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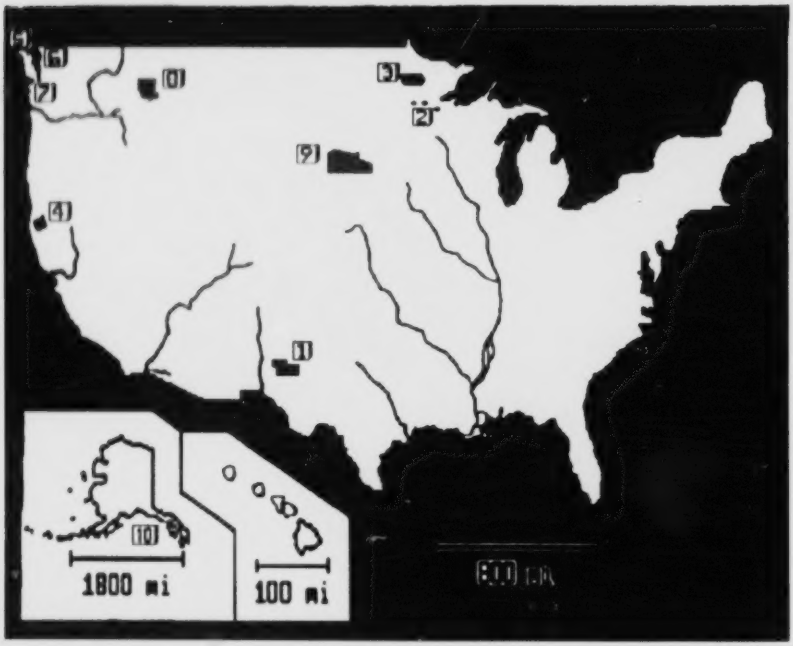
In Guatemala, there are about fifty original nations with a collective population of nearly six million. Together they are known as the Maya. About half of more than eleven million Maya are located in the southern part of the state of Mexico. In both Guatemala and Mexico the nation-state government apparatus is controlled by the descendants of immigrant populations, mostly from Spain. In Indonesia, the vast archipelago north of Australia, there are about 300 separate and distinct nations living under the control of a Javanese controlled nation-state apparatus in Jakarta. Some of the nations which have not consented to Indonesian control are the West Papuans, South Moluccans and the East Timorese.

In the vast continent of Africa there are about fifty nation-states, most of which have come into independent existence in only the last thirty years or less. Hundreds of nations continue to exist, surrounded and sometimes bisected by the newly created states. Some of these nations are the Alur, Kamba, Maasai, Xhosa, Eritreans, Zulu and the Lambwa. If an African nation-state government apparatus is not under the control of an immigrant population from Europe, it is under the control of a dominant nation. In the Union of Soviet Socialist Republics, the Russians control the state apparatus, but there are more than 150 non-Russian nations like Latvia, Estonia, Tadsig, Armenia and Usbek which are either non-self-governing or only partially self-governing. A similar pattern occurs in virtually every European nation-state; and nation-states in South America, South Asia and in North America.

The reality of non-self-governing nations is truly a world-wide phenomenon. It is no less a phenomenon inside the boundaries of the United States. There are more than four hundred American Indian and Alaskan native reservations, rancherias, and village communities surrounded by the U.S. Some of these nations are the Hopi, Anishinabe, Shoshone, O'Otam, Yakima, Lakota, Diné, Lummi, and Quinault. Like other indigenous nations in the world, they are either non-self-governing or only partially self-governing. None is fully self-governing. If all of the reservations, rancherias, and village communities were combined, Indian Country would have a land mass of 680,000 square miles: an area about the size of Alaska, larger than most European nation-states. Many reservations are in themselves larger than any nation-state in the Caribbean, most of those in the Pacific, and many of those in Europe. Each part of Indian Country is occupied by a people that makes up a single nation, or a fragment of scores of other nations.

The presence of many nations inside a nation-state's boundaries is clearly not unique. Who governs these nations? Who will govern these nations in the future? What is the political status of these nations? What is the future political status of these nations? These are the questions which now echo around the world; in the halls of the United Nations, in the capitols of nation-

Indian Self-Governance Demonstration Nations
Ten First-Tier Participants



In 1987, ten Indian nations accepted an invitation by the U.S. government to participate in a two-year self-governance planning period – as a part of a possible five-year process. After the planning period, each Indian nation had the option of opening negotiations of a Self-Governance Compact, or each could simply decide not to go any further in the process. If negotiations were conducted and successful, then the Compact nation would undertake a three-year Self-Governance Demonstration Project – based on the agreement. The ten first-tier nations are: 1. Mescalero Apache, 2. Mille Lac Chippewa, 3. Red Lake Chippewa, 4. Hoopa Tribe, 5. Jamestown Band of Klallam, 6. Lummi Indian Tribe, 7. Quinault Indian Nation, 8. Confederated Salish & Kootenai Tribes, 9. Rosebud Sioux Tribe, and 10. Tlingit-Haida Central Council.

states and increasingly in the councils of indigenous nations in the United States. The United Nations has since 1973 been examining the future status of nations inside existing states. Indeed, the U.N. Working Group on Indigenous Populations is seriously considering language for an *International Declaration on the Rights of Indigenous Peoples* which would impose international standards on the relations between nations and states.

The nation-states of Sweden, Australia, Canada, Nicaragua, Sri Lanka are all now considering proposals for the future political status of nations inside their boundaries. In December 1987, the U.S. government adopted a plan proposed by North American indigenous nations to determine the extent to which several indigenous nations will assume greater powers of self-governance. The Self-Governance Demonstration Project was authorized by the congress in September 1988. This U.S.-adopted plan opens the possibility of new self-governance agreements, between Indian governments and the federal government. Shouldn't the full meaning of self-determination, of self-government, be extended to nations as freely as it was extended to former colonies which have become independent states?

Of course, we agree that all people should freely govern themselves. What is often the bone of contention is *how* nations which were once fully self-governing, and which have sometimes very small populations and land areas, can become self-govering again. Inside the United States, the question of how indigenous nations can fully govern themselves is complicated by generations of systematic territorial and population fragmentation. The *how* is further complicated by the existence of fifty States of the Union which function essentially as provinces, joined in federation, and more than 3000 counties. While many American Indian nations were being fragmented, dismembered and scattered the United States of America was being formed and consolidated. Despite four hundred years of fragmentation and two hundred years of U.S. consolidation, however, there are still sovereign indigenous nations and countless unresolved disputes between these nations and the United States.

Some people ask the question, "How can you have a lot of sovereign nations inside the United States, which is itself a sovereign state?" Still others, like Washington State Attorney General Ken Eikenberry, in the 1985 report *The State of Washington and Indian Tribes*, ask the question of "how to govern a complex, interdependent society with independent sovereignties existing as jurisdictional enclaves within its borders."[1] American Indian leaders frequently raise the same questions, only from the point of view of governing an indigenous nation.

In 1980, an intertribal study group said in its report, *Tribes and States in Conflict*, "indigenous nations are not now, nor have they ever been, a part of the United States or its system of governments."[2] The Washington attorney general's 1985 report made the observation "One reason that the State of Washington and its Indian citizens have frequently been in court is because no one truly understands exactly what position an Indian tribe occupies within the federal system."[3] The certainty of native leaders and uncertainty among state government officials on the political status of indigenous nations in relation to the U.S. federal system add to the complexity of answering the

questions of "Who governs native nations?" and "What is the political status of these nations?" Questions like these were at the heart of a two year joint congressional study conducted by the American Indian Policy Review Commission in the mid 1970s. Such questions stirred intense controversy inside the commission and throughout the country.

In 1977, the American Indian Policy Review Commission published its final report.[4] Strong differences of opinion within the commission produced a report that included a dissenting statement by former Congressman Lloyd Meeds who sat as the vice chairman during the two years of the commission's life. Meeds took exception to many parts of the commissions final report, but he was particularly concerned with the report's conclusions about tribal governing powers. The congressman described what he believed to be the commission's "fundamental error." He wrote that the commission's report,

> perceives the American Indian tribe as a body politic in the nature of a sovereign as the word is used to describe the United States and the States, rather than as body politic which the United States, through its sovereign power, permits to govern itself and order its internal affairs, but not the affairs of others.

At the heart of Congressman Meeds' dissent was this argument: "In our Federal system, as ordained and established by the United States Constitution, there are but two sovereign entities: the United States and the states. This is obvious not only from an examination of the constitution, its structure, and its amendments, but also from the express language of the tenth amendment which provides: "The power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the peoples."[5] Meeds goes on to say, finally: "The blunt fact of the matter is that American Indian tribes are not a third set of governments in the American federal system. They are not sovereigns." In his statement, the congressman has done us all a great service in clarifying a certain logic. His argument might be outlined in this way:

- Indigenous nations are a body politic which the United States permits to govern itself and order its internal affairs, but not to govern the affairs of others who do not participate in the Indian government.

- The United States Constitution provides for two sovereigns, the United States and the various States of the Union, but it does not provide for a third set of governments which are indigenous governments in the American federal system.

- Indigenous nations and their governments are not sovereigns.

We might agree that in some respects he helps us to understand why the Washington State attorney general expresses his doubts about how a state can "govern a complex, inter-dependent society with independent sovereignties existing as jurisdictional enclaves within its border." He also helps us to understand why some people have doubts about how there can exist many sovereigns inside a sovereign state. In one respect we find that Congressman Meeds is in complete agreement with some American Indian leaders when he says: "American Indian tribes are not a third set of governments in the American federal system," and he gives the Washington attorney general a clue about what position Indian tribes have in the federal system. Finally, Meeds helps us to understand "Who governs these indigenous nations?" and what their political status is. He also gives us some clues about "Who will govern these American Indian nations in the future?" and what their future political status might be.

Let's take the points in Meeds' argument one by one and see how they can help in our debate on the political status of indigenous nations in the U.S. First, the congressman argues that indigenous nations are permitted to exercise a form of self-government by the United States. He suggests that the word "self" in self-government should be emphasized, meaning that Indians should govern Indians only. Further, he implies that any resident of an Indian reservation or community who does not have the right to participate in the decisions of the indigenous nation to which the land belongs must be exempt from the governing powers of that nation. Congressman Meeds also suggest that American Indian nations may exercise only those governmental powers the federal government permits them to retain.

Though Meeds seems a victim of gross over-simplification, he is probably correct in saying that the governmental powers of indigenous nations are heavily restricted by the U.S. government. Indeed, I would suggest that because the United States government unilaterally decided to cease making treaties with native nations in 1871, thus effectively bringing to a halt 250 years of treaty relations and setting up the U.S Congress as the primary arbiter of indigenous governmental decision-making, the federal government in general and the congress in particular have become virtual instruments of dictatorship over North American indigenous nations. Unilateral decision-making by the U.S. government is doubtless responsible for the diminished powers of self-government among American Indian nations.

As for Meeds' emphasis on the word "self" in self-government to mean Indians may govern only other Indians, he doubtless expresses a somewhat race-conscious view shared by many citizens of the United States. He would

surely not intend such a narrow interpretation to apply to the United States or its various states. He surely does not intend that the federal government, which is that of a self-governing state, should only have authority to govern its own citizens and not the non-citizens who visit or live inside U.S. boundaries. He surely would not intend his interpretation of self-government by indigenous nations to also apply to the other 176 states in the world. Were his narrow interpretations to apply to the states of the world, we would now see a planet in jurisdictional chaos.

The plain fact is that the term "self-government" has a well established meaning in literature, history and international relations. It simply means the inherent right of a people to adopt their own form of government, to define citizenship, to regulate domestic relations, prescribe rules of inheritance, levy taxes, regulate property, regulate residents by municipal legislation, conduct trade, and to administer justice, among other things. That the United States has unilaterally restricted American Indian self-government does not mean that native nations lack the right and power to exercise full self-government - the same as any other peoples in the world. Indigenous nations reserved their powers of self-governance, and have the right, like any other people to fully resume those powers. To be meaningful, such powers of self-governance must necessarily extend over all civil and criminal activities within an American Indian nation's territory.

In answer to the question "Who governs these indigenous nations?" let us note that since 1871, the United State government, native nations, and more recently some of the various state governments exercise governmental powers inside indigenous nations. Most American Indian nations are only partially self-governing while some exercise no governing powers at all. In the latter case, the federal government and some of the state governments as well as some counties and even cities exercise governmental powers over some indigenous nations.

Where native nations are partially self-governing in their territories, there exists mixed, overlapping and even competing legal and political systems. For many tribal, federal, state, county and municipal legal authorities, Indian reservations are in political and legal chaos. This is the very condition that Congressman Meeds and all of us expect to avoid in the relations between the nation-states of the world. Because of racial bigotry and historical realities, we find that the chaos we would avoid among nation-states is precisely the disorder created in Indian Country.

Where Congressman Meeds seems certain about the political sovereignty of the United States, the various States of the Union and the lack of sovereignty in indigenous nations, others are either totally confused or absolutely certain that all three governments are sovereign. To establish the fact that the U.S.

government and the governments of its various states are political sovereigns, Meeds turns to the U.S. Constitution. He correctly observes that the constitution allows that some powers are delegated and inherent between the two layers of government. Moreover, he observes correctly that the American Indian policy Review Commission argued in its *Final Report* that indigenous nations *"have the characteristics of sovereignty* over the lands they occupy analogous to the kind of sovereignty possessed by the United States and the states [emphasis added]."[6] Meeds suggests, accurately I believe, that "American Indian tribes are not a third set of governments in the American federal system." Were this so, North American indigenous nations would be specifically identified in the U.S. Constitution as a third level of government. This is clearly not the case. Finally, the congressman states bluntly that American Indian nations "are not sovereigns." It is this last statement that gets him into trouble.

Asserting that indigenous nations are not identified as a third level of government in the U.S. Constitution, Congressman Meeds concludes that native nations are not sovereign entities. I hasten to note that the constitution does not list France, China, Canada or Mexico either. It doesn't even mention the Republic of Vanuatu, which became an independent state in 1980. Despite these oversights, I don't believe anyone, including Meeds, would doubt that France, China, Canada, Mexico and Vanuatu are sovereign entities. That the constitution fails to mention American Indian governments as a third level of government only means that *indigenous nations are not now, nor have they ever been a part of the United States or its federal system.*

Indigenous nations were not participants in the development and formulation of the Constitution of the Untied States. No American Indian nation ever ratified that constitution, but then, neither did France, Canada or China. That indigenous nations were not identified as sovereigns under the constitution has nothing to do with their sovereign identity unless you are among those people who believe incorrectly that the federal government "created" indigenous nations. Of course, to hold this latter view would require that you ignore archaeological anthropological, historical, political and legal evidence to the contrary.

The settled reality is that American Indian nations have original or inherent sovereignty, in many ways more sure and certain than many of the nation-states of the world. The legitimacy of North American indigenous national sovereignty is confirmed by their long presence as peoples on the continent. The fact that native nations established treaty councils between themselves to establish boundaries and resolve disputes also confirm that sovereignty. The fact that nations and states in Europe and elsewhere in the world met in treaty councils with American Indian nations before the

establishment of the United States further confirms that the predecessor states of the U.S. recognized the sovereignty of North American indigenous nations. That the federal government itself entered into treaties (some 371 of them duly ratified) with native peoples confirms that even the U.S. has recognized the original sovereignty of indigenous nations.

From this discussion we must conclude that the political status of American Indian nations is outside that of the United States, and that these indigenous nations are therefore sovereigns which have some kind of association with the U.S. While Congressman Meeds' reasoning about indigenous nations and the federal system is sensible in some ways, his conclusion is entirely erroneous. North American native nations are sovereign entities in a way analogous to the sovereignty of the United States itself. Indeed, I would go further to say that the sovereignty of indigenous nations is fundamentally no different than any other nation or state in the world. What does this all mean for our second question: "Who will govern these nations in the future? – what is their future political status?" This may be addressed in three parts.

- First, I would suggest that we must all agree that the current chaotic "non-governance of Indian Country" is neither good for the U.S. nor any indigenous nation in North America. Neither Indians nor non-Indians living on reservations can live a secure and productive, much less prosperous, life so long as there is uncertainty about who governs in Indian Country. That is the first point.

- Second, it is essential that we all attempt to understand how the United States was created and that the U.S. did not create indigenous nations. While it may be a controversial view shared by some American Indian leaders, Congressman Lloyd Meeds and me, I believe we must recognize as a fundamental reality that the political status of indigenous nations has not yet been formally established. It is certain, however, that native nations are not now nor have they ever been a part of the United States or the U.S. federal system. Indigenous nations are *not* "a third level of government in the American federal system." American Indian nations do not have a defined political status *inside* the U.S. To the extent they do have a political status in relationship to the U.S., it should be described as that of "associated nations."

- Third, I believe we must understand and agree that indigenous

nations have original and inherent sovereignty, separate and distinct from the sovereignty of the United States, its various states and all other nations and states in the world. Finally, I suggest that peoples which are distinct from all others must share in the human right to self-determination, the right to freely exercise their own social, economic, political and cultural rights and to choose their political status without external interference; and they must, therefore, have the right to exercise self-government.

The answer to our second question largely depends on the extent to which Indians and non-Indians alike agree to these four points. If these points are generally agreed to, then the prospect of determining who will govern indigenous nations and establishing their political status in the future becomes realistic. To those who ask, "How can you have sovereign nations inside a sovereign state?" I would only ask that they examine the facts. There are sovereign indigenous nations inside the U.S. boundaries whether we like it or not. How do you have many sovereigns inside of a country? Examine the U.S. Constitution and you will see that there are already many sovereigns inside the United States. That there are still many other sovereigns not accounted for in the constitution means only that either the constitution should be changed or we create new structures between American Indian nations, the United States and the various States of the Union to allow for mutually acceptable ways of dealing with each form of government.

To the attorney general who asks how do you "govern a complex, interdependent society with independent sovereignties existing as jurisdictional enclaves within its borders?" I suggest that the answer rests with present and future dialogue between officials representing the separate sovereignties. The fact of the matter is that while many states in the U.S. have sovereign indigenous nations inside their boundaries, native nations also experience the presence of state, county, city and federal jurisdictional enclaves inside their territories. The broad response to state governments is to withdraw their jurisdictional activities inside the boundaries on the basis of mutual agreement with the governments of indigenous nations. Where local state jurisdiction is withdrawn, an American Indian government must assume the responsibilities of governance.

Indigenous governments must be the sole governing authority inside the boundaries of a reservation in the future. The only alternatives to this arrangement are continued jurisdictional chaos on Indian reservations or tribal suicide. Neither of these can be acceptable alternatives to the exercise of full self-government by indigenous nations. As the noted Jurist Felix

Cohen observed in his *Handbook of Federal Indian Law*:

> The most basic right of all Indian rights, the right of self-government, is the Indian's last defense against administrative oppression, for in a realm where the states are powerless to govern and where Congress, occupied with more pressing national affairs, cannot govern wisely and well, there remains a large no-man's land in which government can emanate only from officials of the Interior department or from the Indians themselves. Self-government is thus the Indians' only alternative to rule by a government department.[7]

As for the future political status of American Indian nations, there are but three alternatives which might be considered. Either indigenous nations are fully and recognizably independent, they are associated with a state like the U.S., or they are absorbed into the United States either as a member of the federal system of governments, or they simply disappear. Clearly, indigenous nations in the U.S. are neither independent nor are they absorbed. I assert that indigenous nations are now sovereign nations which are associated with the United States. The political status of "associated sovereign nations" is implicit in the relationship between native nations and the U.S. The United States is a state associated with these indigenous nations.

The U.S. is also associated with many political entities like Puerto Rico, the Virgin Islands, the Federation of Micronesia, the Marshall Islands, American Samoa, Guam and Belau, all island nations or states in the Caribbean or the Pacific Ocean. What these nations and states have in common that is not shared with indigenous nations is a mutually defined agreement of association with the United States of relatively modern vintage. Such agreements spell out relationships, methods of dispute resolution and levels of self-government. What American Indian nations have in common that is not shared with seaward associated nations and states is a close proximity to the U.S. itself. North American indigenous nations are very much like islands in a sea of land where they are in close competition with the United States and the various states for natural resources, and governmental jurisdiction.

A defined political status for North America's indigenous nations in relation to the United States is both desirable and necessary. Each native nation and the U.S. must enter into government-to-government negotiations to define what their future relationship will be. A political status, formally defined, would settle in a way not otherwise possible how American Indian nations, the United States and the various States of the Union should deal with one another. Of greatest importance, indigenous nations would once again become active participants in the political process which determines their political future.

The most desirable future one might project would allow for fully self-governing American Indian nations which have formally chosen to associate themselves with the United States, in one of a broad range of possible relationships. By virtue of free association, agreements between North American indigenous nations and the United States, the U.S. Constitution would not require amendment. The United States would in fact have but two sovereigns, and the relationship between the various states and indigenous nations would become that of cooperative neighbors instead of fierce competitors. The political development of native nations would be advanced, and the certainty and stability of the U.S. would be far better assured than is presently the case.[8]

The acceptance of an American Indian-developed self-governance plan by the United States in 1987 opens the door for determining the level of self-governance and future political status of indigenous nations in North America. Ten native governments are now engaged in a self-governance agreement between themselves and the federal government. The indigenous nations which have begun to trek on this uncharted path include the Red Lake Chippewa, Mille Lac Chippewa, Rosebud Sioux, Confederated Salish-Kootenai, Tlingit-Haida, Hoopa, Mescalero Apache, Jamestown Band of Klallam, Lummi and Quinault. The path that these indigenous nations cut through the thicket will largely determine whether native self-governance can become a full reality or not. It is my hope that they are successful.

Notes

1. *The State of Washington and Indian Tribes*, Office of the Attorney General for the State of Washington, Olympia, 1985.

2. Ryser, Rudolph C. (ed.), *Tribes and States in Conflict: A Tribal Proposal*, Inter-Tribal Study Group on Tribal/State Relations, Rational Island Press, Seattle, 1981.

3. *The State of Washington and Indian Tribes, op. cit.*

4. American Indian Policy Review Commission (AIPRC), *Final Report of the American Indian Policy Review Commission*, Congressional Printing Office, Washington, D.C., May 17, 1977.

5. *Ibid.*, p. 573

6. *Ibid.*

7. Cohen, Felix S., *Handbook of Federal Indian Law*, U.S. Government Printing Office, Wasington, D.C., 1941 (Supp. 1942; Revised Printing 1945), p. 122.

8. For further information on the pros and cons of this point, see Minugh, Carol J., Glenn T. Morris and Rudolph C. Ryser (eds.), *Indian Self-Governance: Political Perspectives on the Political Status of Indian Nations in the United States of America*, Center for World Indigenous Studies, Kenmore, WA, 1989.

Native America
The Political Economy of Radioactive Colonialism

by Ward Churchill and Winona LaDuke

> [O]ur defeat was always implicit in the history of others; our wealth has always generated our poverty by nourishing the prosperity of others the empires and their native overseers...In the colonial and neocolonial alchemy, gold changes to scrap metal and food into poison...[we)]have become painfully aware of the mortality of wealth which nature bestows and imperialism appropriates.
>
> – Eduardo Galeano –
> *The Open Veins of Latin America*

Land has always been the issue central to North American politics and economics. Those who control the land are those who control the resources within and withon it. Whether the resource at issue is oil, natural gas, uranium or other minerals, water or agriculture, land ownership, social control and all the other aggregate components of power are fundamentally interrelated. At some levels, such a situation seems universal, but in this hemisphere, given the peculiarities of a contemporary socioeconomic apparatus of power which has been literally imported in its entirety, the equation seems all the more acute.

Within North America, American Indian reservations – or "reserves," as they are called in Canada – constitute a small but crucial "piece of the rock." Approximately one-third of all western U.S. low-sulphur coal, 20% of known U.S. reserves of oil and natural gas, and over one-half of all U.S. uranium deposits lie under the reservations.[1] Other important minerals such as bauxite and zeolites are also located there in substantial quantities, and a considerable proportion of western U.S. water resources are subject to American Indian priority use through various treaty stipulations. A comparable situation prevails in Canada, as was discussed by Jim Harding in the first volume of *Citical Issues in Native North America*.[2] Even these figures are misleadingly small. Past (1890-1920) and more recent (1930-1980) land expropriations undertaken by corporate interests such as railroads, agribusiness and mining concerns, as well as "land withdrawals" from the indigenous nations orchestrated by the federal government under the provisions of the General

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Variations of this essay have previously appeared in *Socialist Review*, *Akwesasne Notes*, *Insurgent Sociologist*, and *Journal of Ethnic Studies*.

Allotment Act (25 U.S.C.A. § 331; 1897), the "Termination Act" (67 *Stat.* B132; 1953), and other legislation must be considered in any rational assessment.[3] If the areas stripped away from tribal ownership and control in direct violation of standing international agreements is included, the quantity of contemporary American Indian resources is suddenly jolted to a much higher level than is conventionally perceived.[4]

One example of this is the southern Arizona copper belt, a deposit yielding fully two-thirds of all U.S. copper ore. The bulk of the area was a part of the Papago (O'Otam) Reservation until the copper was discovered during the 1920s. The ore bearing area was subsequently removed from the O'Otam domain by unilateral decree ("statute") of the U.S. Congress.[5] Similarly, the bulk of the massive Fort Union coal deposit of Wyoming, Montana and North Dakota which does not underlie current reservation boundaries *does* underlie the territory reserved by the Lakota, Cheyenne and Arapaho nations under the terms of the 1868 Fort Laramie Treaty. Although some 90% of the original treaty area has now "passed" from Indian control, the treaty remains an internationally binding agreement acknowledging indigenous ownership in perpetuity.[6]

Aside from the mining interests which have made huge contemporary inroads into what amounts to unceded Indian territory, another focal point of any examination of Indian resources must concern water rights. In the arid but energy rich western U.S., water is both prerequisite and integral to all forms of corporate development. The preponderance of western water is legally owned (by virtue of treaties) by various Indian nations. Hypothetically, even if a given indigenous nation could not retain control over a portion of its territorality, it could still shape the nature and extent of corporate exploitation of the land through assertion of its water rights. Of course, the federal government has systematically acted to diminish or effectively void most Indian exercise of water rights prerogatives.[7]

A final factor worthy of consideration concerns, not resource distribution and control, but the distribution of production itself. For instance, while Indians technically "own" only about half of U.S. uranium resources, production statistics relative to reservation areas are *much* higher. In 1974, 100% of all federally controlled uranium production accrued from the contemporary reservation land base.[8] In 1975, there were some 380 leases concerning uranium extraction on reservation lands, as compared to a total of four on *both* public and acquired land. In Canada, the data are quite similar,[9] indicating that while North American Indian resources are perhaps not overwhelmingly large on a global scale, production certainly *is*.

The pattern of colonization prevalent in South America and noted in the quotation from Eduardo Galeano at the outset of this essay seems appropriate

to conditions currently existing in the North as well. Internal colonialism – the colonization of indigenous peoples – is a malignant, if little discussed, fact of life within both the United States and Canada (and Mexico as well). The centrality of the issue of colonization of such Fourth World peoples to any reasonable strategy of global anti-imperialism seems much more evident in the North than in the South, not for moral reasons, but for pragmatic ones.

North America, the U.S. in particular, is the seat of the most comprehensive system of imperialism ever witnessed by humanity. Increasingly, it is a system fueled by nuclear capabilities, fed by uranium. The relationship of the reservations to that uranium is clear. Likewise, the United States and Canada lead the world in "food production." Needless to say, they have a huge stake in maintaining this position of dominance. Again, the relationship of the American Indian treaty lands to primary North American agricultural areas is readily observable. The same can be said relative to a range of crucial resources. Such issues, the internal integrity and hegemony of North American imperialism, and the colonial stranglehold over the resources of internalized sovereignties it implies, are the subject of this essay. It seems especially appropriate as U.S. uranium production, after nearly a decade of hiatus, shows signs of resuming during the 1990s.

Internal Colonialism

> A distinction must be made between property in its economic and legal aspects and property considered as a social institution. The territorial question of American Indian peoples in the United States is fundamentally an economic question, that is as the source of livelihood, but also involves the survival of human societies, and is, therefore, a question of human rights, and a nationalities question. A people cannot continue as a people without a land base, an economic base, and political independence. as distinguished from a religious group or an ethnic minority of fundamentally the same historical character as the majority society.
>
> United Nations Subcommittee on Racism,
> Racial Discrimination, Apartheid and
> Decolonization
> Final Report (1977)

American Indian nations in North America are today constrained to occupation of approximately 3% of their original land base.[10] Nonetheless, this land if carefully managed or, in some cases, expanded to reconcile to legally posited treaty boundaries, provides a viable basis for national survival. The Navajo Nation, as one example, holds a territorial basis comparable to that of

Belgium, the Netherlands or Denmark. It is considerably larger than such European sovereignties as Luxemburg, Lichtenstein or Monaco. Its natural resource base is far greater than that of these nations *combined*.[11] The Lakota, or "Great Sioux," Reservation of the Dakotas, prior to its patently illegal dismemberment under the General Allotment and Homestead Acts, would provide an even more striking example. The Menominees of Wisconsin were almost entirely self-sufficient despite radical reductions of their land base, with a replenishable economy based on timbering, when the nation was unilaterally "dissolved" by congressional fiat under the Termination Act. The peoples of the Pacific Northwest, the "Five Civilized Tribes" (Creek, Cherokee, Chickasaw, Choctaw and Seminole, relocated from the Southeast to Oklahoma by federal force during the 1830s), the O'Otam of Arizona, the Cheyenne and Crow of Montana – and the list could go on and on – each possesses a treaty-sanctioned and demonstrably viable economic basis for national existence. In Canada, the situation is much the same.

The *foreign* interests represented by the U.S. and Canadian national governments, however, have not been content with past land confiscations. Throughout this century, and into the present moment, each has proceeded with the most insidious and mercenary neocolonial policies imaginable. A primary (and classic) vehicle of neocolonialism was created under the so-called "Indian Reorganization Act" (25 U.S.C.A. § 461; 1934), whereby the United States imposed a system of "tribal council" governments on each reservation, a mechanism designed to replace traditional (and resistant) Indian governmental forms with an apparatus approved by and owing its allegiance to Washington, D.C.

Recognized by the United States after 1934 as the sole governing body of Indian reservations (and peoples), the tribal council system rapidly circumvented or usurped the authority of traditional Indian governmental structures such as the Councils of Chiefs. The U.S. rationale was/is readily apparent. The new "governments" were charged with responsibilities for "economic planning": minerals lease negotiations, contracting with external corporate agencies, long-term agricultural/ranching leasing, water rights negotiations, land transfers, and so on, all of which required direct approval from Bureau of Indian Affairs representatives prior to consummation, and most of which had long been staunchly resisted by the traditional leadership.[12] The "reorganization" brought about a situation through which U.S. "developmental" policies could/can be implemented through a formalized agency *composed of the Indians themselves*. Canada followed suit with a similar ploy during the 1930s.

With the consolidation of political power on this blatantly neocolonial principle, modern internal colonialism became possible in North America. To

inaugurate this fact, federal land management authorities acted immediately (in 1934) to begin the inversion of the extant tribal economies which had been evolved to accommodate both traditional needs and the constrictions of reservation conditions. Stock reduction programs were initiated to alleviate what was termed "overgrazing" of reservation areas by individually and tribally owned cattle. These programs rapidly became permanent – as applied against Indians, *not* against non-Indian ranchers leasing reservation land for grazing purposes – and, since 1935, more than one-half of all Indian livestock resources have been eliminated as a result.

The results of such a policy were predictable and immediate: the economic infrastructure of North American indigenous nations was dramatically undercut. On the Navajo Reservation, for instance, 58% of the people derived a livelihood from stock raising (mostly sheep) and agriculture (mostly gardening) in 1940. By 1958, less than 10% were able to do so.[13] Correspondingly, secondary and tertiary aspects of the tribal economy – such as the wool derived from sheep raising, and the blankets derived from wool – were dislocated. Concurrent to this marked and externally imposed reduction in self-sufficiency was the systematic transfer of economic power to the neocolonial structure lodged in the U.S./tribal council relationship: "developmental aid" from the U.S., implementation of an "educational system" geared to training for the cruder labor needs of industrialism, employment contracts with mining and other resource extraction concerns, "housing programs" to provide appropriate work force concentrations, and – eventually – actualization of cooptive social control mechanisms such as unemployment and welfare for newly dependent Indian citizens.

On the Navajo Reservation in 1978, approximately 35% of the working age population was employed year-round. Of those employed, 57.7% worked as a result of government subsidies, 29.3% received their salaries from private non-Navajo enterprises, and only 13% worked in wholly Navajo operations of all types. This, of course, left Navajo *un*employment at approximately 65%. Hence, Navajo self-sufficiency may be estimated as accommodating some 4.3% of the work-age population, down from 100% in 1920.[14] Such a transition from self-sufficiency to destitution would seem the strongest possible testimony to the negative effects of U.S. internal colonialism on indigenous populations, but it is not: At the Pine Ridge Lakota Reservation in South Dakota, to list but one example, unemployment currently hovers over 90% and self-sufficiency is unknown.[15]

Overall, reservation unemployment in both the U.S. and Canada runs at about 65% (making the Navajo example somewhat normal).[16] Subsistence is gleaned from a sort of federal *per capita* payment system which keeps the bulk of the population alive but abjectly dependent. Two Canadian researchers,

Mark Zannis and Robert Davis, analyzed the welfare system in Canada and found that:

> The welfare system is a form of pacification. Combined with political and physical repression it keeps people alive at a subsistence level but blunts any attempt at revolt while turning them into captive consumers of industrial products...For the past 2-3 decades, a kind of enclosure movement has taken place, brought on by the very nature of the welfare system and the dictates of corporate profits.[17]

Zannis and Davis go on to note that residential requirements are prerequisite to any form of welfare – nuclear families and individuals receive this sort of income *as opposed* to groups (*i.e.*, "clans" or extended families, the traditional Indian form of social organization). Coupled to the educational system, the result is that "without children, adults are deprived of the essential labor to carry out traditional economic activities. This creates the need for more welfare," and continues the "reorganization" of Indian societies mandated by the act of 1934.

In recent years, it has become obvious that the social and economic disruption inflicted upon many indigenous nations results from needs peculiar to energy corporations. For example, when Peabody Coal requires 400,000 acres of Indian land for a strip mining operation, not only is the Indian socioeconomic infrastructure (land use, employment and the like) impacted, but the physical distribution of the people as well. Relocation of people – as is happening at Big Mountain, Hopi and elsewhere – with accompanying forced transformations of familial integrity, community organization, etc., is very much at issue.[18] The process of phased destruction of tribal entities undertaken as reorganization in the 1930s greatly accelerated with the advent of the world "energy crisis" in the 1970s, and continued apace during the '80s.

Compounding this problem in the 1980s and on into the '90s were the budgetary cutbacks in social service spending undertaken by the "supply-siders" of the Reagan and Bush administrations. As the federal government defaults on the reservations, native people are driven for bare sustenance into the arms of the very corporations with which they are purportedly to "negotiate" over use of their land and extraction of their resources. Clearly, prostration is a poor bargaining position from which to proceed, but a half-century of neocolonial rule has resulted in little else. Despite the obvious and abundant wealth of land and resources retained by the nations mentioned above, North American Indian populations suffer virtually the full range of conditions observable in the most depressed of Third World areas. Theirs is the highest rate of infant mortality on the continent, the shortest life expectancy, the greatest incidence of malnutrition,

the highest rate of death by exposure, the highest unemployment, the lowest *per capita* income, the highest rate of communicable or plague diseases, the lowest level of formal educational attainment, and so on.[19]

Since such data indicate amply that the federal government has abjectly failed in promoting Indian well-being as promised by the Reorganization Act, there is a strong feeling in many quarters of Indian Country that the turn to the corporations now being necessitated by Reaganite policies is not such a bad idea. Despite the poor bargaining position through which indigenous nations are securing extraction royalty rates in the 2-5% (of market) range, a pittance in the world economy, internal production distribution within North America is such that the sheer quantity of mining and other corporate activities likely to occur over the next twenty years will generate a huge cash flow into the hands of the tribal councils.[20] It is this cash flow, real and potential, which the feds, the tribal governments and the corporations are all banking on to offset – in the short run at least – the cumulative effects of internal colonialism on American Indians.

Western energy resource rich reservations in particular are thus faced with a political and economic turning point at least as vast in its implications as the reorganization of the 1930s or even the 19th century transition(s) to reservation status. Whether to embrace and participate in the process of industrializing the reservations after the fashion of "developing" Third World nations, or whether to pursue a "Fourth World" strategy of attempting to disengage from dominant processes and procedures altogether?[21] The results of this decision will undoubtedly shape the futures of American Indian peoples irrevocably. At this juncture, even many of the tribal councils are beginning to realize the stakes of the issue, and some are expressing consternation as a result. To date, however, no tribal council member has been able to articulate a clear position favoring the disengagement option *as opposed to* "development." A number have attempted to articulate plans favoring *both* approaches, a stance which has proven so contradictory as to be untenable. Whether some will ultimately break ranks with the federally promulgated vision of "progress" remains to be seen, but will no doubt prove crucial to the number and magnitude of factional splits within the native peoples themselves over the next decade.

The New Colonialism

> Simply stated, the difference between the economics of the "old colonialism" with its reliance on territorial conquest and manpower and the "new colonialism," with its reliance on technologically oriented resource extraction and transportation to the metropolitan centers, is the expendable

relationship of subject peoples to multinational corporations. This fact has implications for both the new ways in which genocide is committed, and the new kind of dependence created. Under the old colonialism the economy of subject peoples was more or less incorporated into the colonial system in a fashion which altered the subject people as little as possible. The economic base commodities were extracted and semiprocessed, in part, by the subject people. These people were expected to maintain their own subsistence economy basically intact...Under new style colonialism, the subsistence economy is not a matter of great concern to the corporations. The raw material they wish to process is usually not organic, nor does it require "heavy labor," the multinational corporation today does not see any relationship between what they want (mineral wealth) and the local economy (organic wealth).

– Robert Davis and Mark Zannis –
The Genocide Machine in Canada

Spurred by the advice of the Bureau of Indian Affairs and corporate promises of jobs and royalties, the Navajo Tribal Council approved a mineral extraction agreement with Kerr-McGee in 1952. In return for access to uranium deposits near the town of Shiprock on the reservation, and to fulfill risk-free contracts with the U.S. Atomic Energy Commission, Kerr-McGee employed 100 Navajo men in underground mining operations.[22] Wages for these nonunion Navajo miners were low, averaging $1.60 per hour or approximately two-thirds of the then prevailing off-reservation rate.[23] Additionally, the corporation cut operating costs significantly by virtue of lax enforcement of worker safety regulations at its Shiprock site. In 1952, a federal mine inspector found that ventilation units in the mine's primary shaft were not in operation.[24] In 1954, the inspector discovered the ventilation was still not functioning properly, with the fan operating only during the first half of each shift. When the inspector returned in 1955, the ventilation blower ran out of gas during his visit.[25] One report, dating from 1959, noted radiation levels in the Kerr-McGee shaft had been allowed to reach 90 times the "permissible" limit.[26]

For the corporation, low wages and guaranteed labor force, privileged contract status and virtually nonexistent severance taxes, and nonexistent safety regulation provided a great incentive to both maintain and expand operations on the reservation. However, by 1969 Kerr-McGee had exhausted easily recoverable uranium deposits at Shiprock, both in geological and financial terms. Uranium extraction technology at the time was such that further profitable recovery – under any condition – was rendered unlikely. Further, the Atomic Energy Commission was in the process of phasing out its

ore buying program, the factor which had made the entire mining gambit feasible in the first place. The Shiprock facility was closed, for all practical intents and purposes, in early 1980.

For the Navajo people, Kerr-McGee's abrupt departure shed light upon the "diseconomies" of uranium development. First, the corporation simply abandoned some 71 acres of "raw" uranium tailings at the mining site. These tailings constitute waste byproducts of uranium ore refinement, but retain 85% of the original radioactivity of the ore.[27] This huge tailing pile begins approximately sixty *feet* from the San Juan River, the only significant surface water source within the Shiprock area.[28] The obvious result has been a considerable dispersal of radioactive contamination to a number of downstream communities which, of necessity, draw upon the river for potable water.[29]

The price of Kerr-McGee's "development" at Shiprock, in terms of life lost in this generation, and in generations yet to come, cannot be calculated by any financial/economic yardstick. Of the 150-odd Navajo miners who worked underground at the Shiprock facility during the eighteen years of its operation, by 1975 eighteen had died of radiation induced lung cancer (*not* the "oat cell" variety associated with cigarette smoking) and another 21 were feared dying.[30] By 1980, twenty of this twenty-one were dead, and another ninety-five had contracted similar respiratory ailments and cancers.[31] Birth defects such as cleft palate, leukemia and other diseases commonly linked to increased radiation exposure have risen dramatically both at Shiprock and in the downstream communities of the San Juan watershed.[32] Since 1970, such diseases have come to be the greatest health concerns of the Navajo Nation.

Nonetheless, by 1980, under the leadership of Tribal Chairman Peter McDonald – a staunch advocate of energy development and founder of the Council of Energy Resource Tribes (CERT) – Navajo had allowed 42 uranium mines and seven uranium mills to be located on or immediately adjacent to the reservation.[33] Some fifteen new uranium-oriented projects were in the construction stages on Navajo land. Additionally, four coal stripping operations averaging approximately 30,000 acres each and five coal-fired power plants have been actualized on the reservation. Much more is in the planning stages. As the U.S. uranium industry undergoes a temporary depression in the early '90s, such non-nuclear energy facilities will remain and burgeon, continuing the development of infrastructure upon which "the new colonialism" depends.

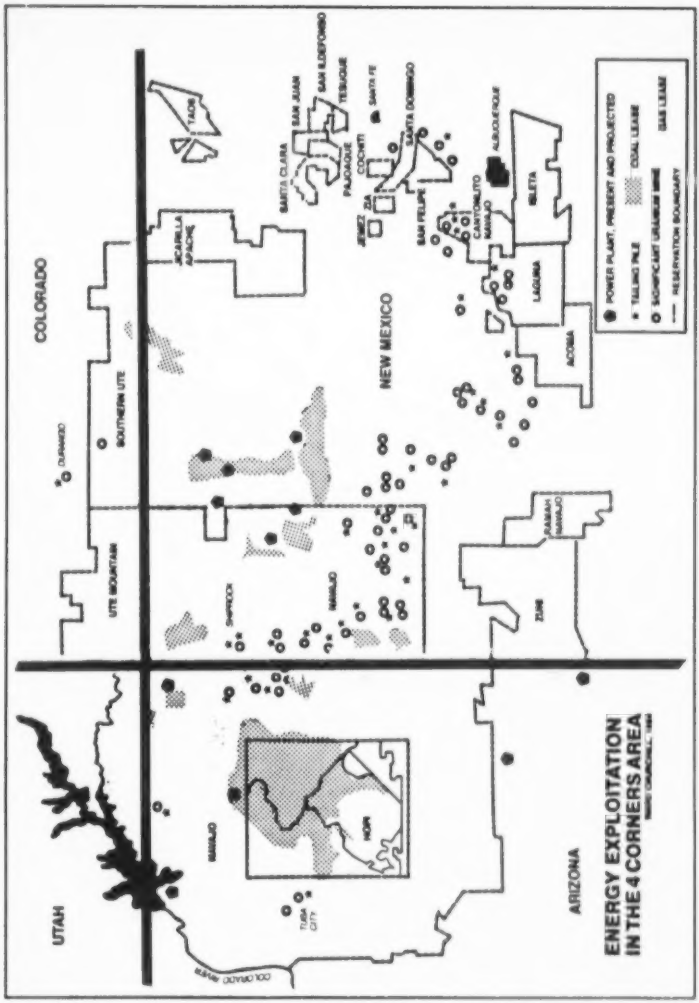
The extent of infrastructural development which is envisioned is indicated by the means through which energy corporations have sought to address the chronic Navajo unemployment spawned by reorganization. In an article entitled "Manpower Gap at the Uranium Mines," *Business Week* observed:

> Currently, 3,200 miners work underground and 900 more are in open pit operations. By 1990, the industry will need 18,400 underground miners and 4,000 above ground...once on the job, Kerr-McGee estimates that it costs $80,000 per miner in training, salary and benefits, as well as the costs for the trainees who quit. Kerr-McGee is now operating a training program at its Churchrock mine on the Navajo Reservation. The $2 million program is financed by the Labor Department (U.S.), and is expected to turn out 100 miners annually. Labor Department sponsors hope the program will help alleviate the tribe's chronic unemployment.[34]

The training program is still in effect and has been successful in employing a number of Navajos in "practical applications" of their new-found skills. In the case of the Navajo Nation, which now has more trained and educated persons *per capita* than any reservation in North America, the form of education within financial reach clearly does not question the desirability of reliance on energy resource exploitation as a means to "self-sufficiency," nor the cumulative effects of radioactive contamination.Yet there are lessons to be learned by those who can manage to be de-educated. It seems axiomatic that the "solution" to unemployment being offered by the energy corporations (in direct collusion with the federal government) is – as in the case of the Shiprock miners – lethal. The consequences to the surrounding habitat and inhabitants also holds to the characteristics introduced at Shiprock. Tuba City, Arizona – another location on the Navajo reservation – has been left with raw tailings piles quite comparable to those at Shiprock and with entirely similar effects.[35] The Kerr-McGee mine at Churchrock discharged some 80,000 gallons of radioactive water from its primary shaft ("dewatering") per day during the early '80s, contamination which was introduced directly into local and downstream potable water supplies.[36]

In July of 1979, the United Nuclear uranium mill, also located at Churchrock, was the site of an enormous accident. The adjacent mill tailings dam broke under pressure and released more than 100 million gallons of highly radioactive water into the Rio Puerco River. Kerr-McGee style safety standards, similar in principal to the ventilation system at Shiprock, were the cause. Although United Nuclear had known of cracks in the dam structure at least two months prior to the break, no repairs were made (or attempted). 1700 Navajo people were immediately affected, their single water source contaminated beyond any conceivable limit. More than 1,000 sheep and other livestock, which ingested Rio Puerco water in the aftermath, died.[37]

As a token of the "expendability" of the indigenous population under the new colonialism referred to by Davis and Zannis, when the Churchrock community attempted to seek compensation – including emergency water and food supplies for directly affected community members – United Nuclear



stonewalled. Through an array of evasions and obfuscations, the corporation was able to avoid any form of redress for *over a year*, finally making a minimal out-of-court settlement when a class action suit was filed in behalf of the town. By then, of course, the immediate life and death situation had passed (long-term effects being, as yet, unknown). The potential outrage of the local

citizenry is, however, a bit constrained. Between the aforementioned Kerr-McGee plant and training program, the United Nuclear facility, and several other energy corporations operating in the area, well over half the jobs and nearly 80% of income at Churchrock was derived from uranium production. Dependency, in its most virulent colonial manifestation, had effectively converted Churchrock into an "economic hostage" – and an expendable hostage at that – of the uranium industry.

But Churchrock and Shiprock are only sample cases of the radioactive colonization prevailing across the face of the Navajo Nation. The full extent of the situation is perhaps best revealed by the accompanying map ("Energy Exploitation in the Four Corners Area"). Nor should the Navajo Nation be considered unique in its experience of radioactive colonization. To the north, within what, in 1977, the Supreme Court of the United States ruled was rightly the land base of the Lakota people, some 40 energy corporations are currently vying for position within an extremely rich "resource belt."[38] Central to the Lakota territory legally defined by the Fort Laramie Treaty of 1868 is the Black Hills region. As of August, 1979, some 5,163 uranium claims were held in the Black Hills National Forest alone (a claim generally accommodates about twenty acres). 218,747 acres of "private" land in the area are also under mining leases.[39]

In addition to uranium, coal is a major factor within Lakota territory. The huge Fort Union coal deposit underlies approximately half the land, including the whole of both the current Crow and Northern Cheyenne Reservations in Montana, the Fort Berthold Reservation in North Dakota, and substantial portions of the Standing Rock and Cheyenne River Lakota Reservations near the North Dakota/South Dakota state line. According to Henry Wasserman:

> Overall, the plans for industrializing the Black Hills are staggering. They include a gigantic energy park featuring more than a score of 10,000 megawatt coal-fired plants, a dozen nuclear reactors, huge coal slurry pipelines designed to use millions of gallons of water to move crushed coal thousands of miles, and at least 14 major uranium mines.[40]

Water may be the most immediately crucial issue. The plans for just one mine, Burdock, call for the "depressurization" of aquifers prior to commencement of mining *per se*. This would entail the pumping of some 675 gallons per minute from the area's quite limited ground water resources. As depressurization must be maintained for the duration of mining activities – projected over a full decade in the case of Burdock – the quantity of water at issue is not trivial. Compounded by the number of mines anticipated as being operational during the same period, the quantity becomes truly astronomical. The

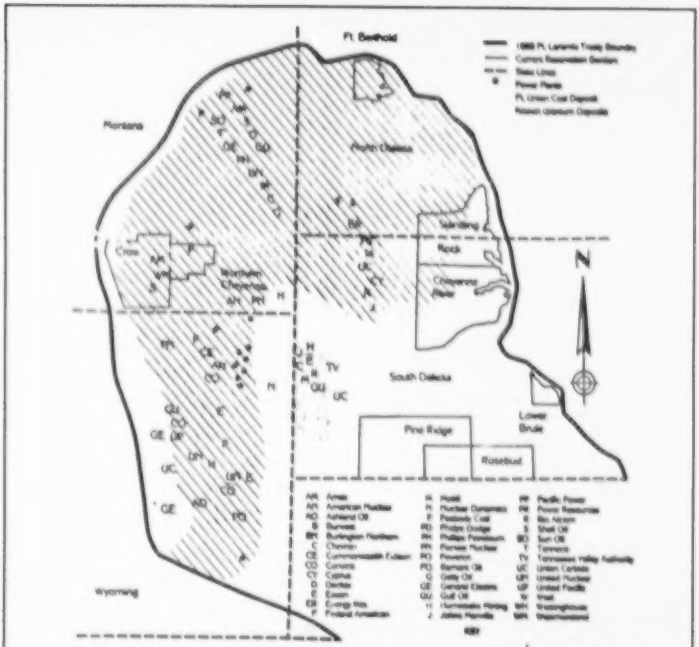
reason for the ten-year limitation on Burdock projections has little to do with depletion of mineral resources, but with the anticipated *total* exhaustion of regional ground water supplies by the end of the first decade of its the mine's operational existence. The pumped off water was slated during the mid-'70s to be used in operations such as the Energy Transportation Systems, Inc. (ETSI) pipeline, which are intended to provide a fluid coal transportation system from the Dakotas to the southeastern United States. The ETSI plan has been on hold since 1985, but has never been abandoned.

Although development and consolidation of the uranium industry within the Lakota territory has not been as pronounced as at Navajo, the sorts of environmental phenomena occurring there are similar. On June 11, 1962, 200 tons of radioactive mill tailings washed into the Cheyenne River, an indirect source of potable water for the Pine Ridge Reservation.[41] In June, 1980 the Indian Health Service announced that well water at the reservation community of Slim Buttes contained gross alpha levels at least three times the national safety standard.[42] A new well at Slim Buttes, moreover, tested at seventy picocuries (pCi) per liter. This is *fourteen times* the standard. Similarly, subsurface water on Pine Ridge's Red Shirt Table tested at several times "acceptable" limits of radioactivity, and tests conducted at the towns of Manderson and Oglala revealed comparable results. The distribution of these locations is such as to indicate that the water sources for the entire reservation have been affected.[43]

Stanley Looking Elk, then Tribal President, requested that $175,000 of the $200,000 federal allocation for reservation water management be committed to securing emergency (uncontaminated) water supplies. In a response strikingly similar to that of United Nuclear at Churchrock in its implications of the "expendability" of the indigenous population, the Bureau of Indian Affairs stipulated that such alternative water supplies could be secured by on Pine Ridge, *but only for consumption by cattle.*[44] Perhaps the reason underlying the government's stonewalling on the issue of radioactive contamination on Pine Ridge is that much worse is yet to come. Not the least cause of this could be the circumstance brought out in a situation report carried in *Akwesasne Notes*:

> The Air Force retained an area near which residents have sighted large containers being flown in by helicopter. These reports have raised strong suspicions that the Gunnery Range was being used as a dump for high-level military nuclear waste, which may be leaking radioactivity into the Lakota Aquifer. In the same area, the rate of stillborn or deformed calves has skyrocketed. Northeast of this area are 12 nuclear missile sites whose radioactive effects are unknown.[45]

The "Gunnery Range" is an area within the northwestern quadrant of the Pine Ridge Reservation "borrowed" from the Oglala Lakotas in 1942 for use



U.S. Corporate Interest in the Greater Sioux Nation

Map by Ward Churchill and Nick Meinhart, Black Hills Alliance, 1981

in training Army Air Corps gunners. It was to be returned upon conclusion of World War II, but never was. In 1975, in "secret negotiations," Tribal President Dick Wilson assigned legal title over the area to the federal government (after 33 years of boldfaced expropriation by the federal government), ostensibly so that it could become a formal part of the Badlands National Monument.[46] Area residents have felt all along that the area is being used as a convenient dumping ground for virulently toxic nuclear waste, away from large concentrations of "mainstream" U.S. citizens.[47]

Whether or not the government is engaged in such a classified operation, it is known that earlier uranium mining and milling activities at the former army ordnance depot at Igloo, South Dakota left something on the order of 3.5 million tons of exposed tailings lining the banks of the Cheyenne River and Cottonwood Creek, one of the river's tributaries, in the downtown area of nearby Edgemont.[48] While it is known that wind and erosion are carrying significant quantities of this radioactive contaminant into these sources of potable water, it is considered "cost prohibitive" to clear up the wastes.[49] To

Uranium tailings dug up from the center of Edgemont, South Dakota, and dumped a few miles outside of town as part of a federal "clean up" program (*Photo: Cynthia Martinez*).

the contrary, during the period 1987-89, the government purportedly "fixed" the tailings problem at Edgemont by digging up the wastes piled all through the center of Edgemont and redumping them in an open area a few miles outside the village limits. This new "disposal site" is protected by nothing more than signs adorning a chain-link fence as accompanying photographs reveal.

Meanwhile, the same governmental/corporate entities which proclaimed that the commencement of uranium mining at Edgemont, *circa* 1955, carried with it "no public health hazard," have by now proclaimed the area so thoroughly contaminated by radiation that there is nothing for it but to use the site as a *national* nuclear waste dump.[50] The cancer death rate among longtime Edgemont residents is currently spiraling, but government/corporate spokespersons still insist the situation of a dump site in the southern Black Hills area would represent "no health danger" for surrounding communities.[51] Former South Dakota governor William Janklow, who campaigned on a platform plank of not allowing dump sites within the state, apparently reversed his field, advocating location of the dump in Edgemont as a boon to the momentarily depressed uranium industry.

What has never been stated publicly by either federal or corporate officials is that such a site, and Black Hills uranium production in general, all but inevitably causes radioactive leaching into the Madison Formation, the

primary ground water source of the region (and the same water which it is proposed will be transported to the American Southeast via coal slurries). The U.S. Department of the Interior itself quietly summed up this problem in a 1979 report cited in *Akwesasne Notes* and concerning uranium tailing ponds:

> Contamination is well beyond the safe limit for animals. Escape by infiltration into the water table or by breakout to stream drainages could cause contamination by dangerous levels of radioactivity. Stock or humans using water from wells down gradient from tailing ponds would be exposed. Plants and animals encountering contaminated flows or contaminated sediments deposited in drainage channels would be exposed. Increasing the danger is the nondegradable and accumulative nature of this type of contamination.[52]

The same, of course, would pertain to the types of material commonly disposed of in nuclear dumping operations. The government report does not bring out that not only *could* this happen but, in all probability, it already has – as is testified to both by the earlier cited 1962 "spill" at Edgemont, and by reported groundwater radiation levels at Pine Ridge. Correspondingly, a tentative study conducted by Women of All Red Nations on Pine Ridge during the late '70s indicated a marked increase in such radiation associated phenomena as stillbirths, infant deformations such as cleft palate, and cancer deaths among reservation residents since the beginning of that decade.[53] The relationship between this situation and the disaster at Edgemont seems clear enough, and underscores the cynicism of government/corporate contentions that a continued development of the uranium industry holds no ill effects for area communities. The Greater Sioux Nation, like the Navajo Nation, has become effectively another radioactive colony within the schema of the new colonialism.[54] Again, the data presented are but a narrow sample of the prevailing situation within the aggregate Lakota treaty territory. A fairer portrait is offered by the accompanying map ("U.S. Corporate Interest in the Greater Sioux Nation").

A more candid (and accurate) appraisal of the situation at Navajo and the Sioux Nation, in view both of current circumstances and of developmental projections, came from the Nixon administration in 1972. At that time, in conjunction with studies of U.S. energy development needs and planning undertaken by the Trilateral Commission, the federal government termed and sought to designate both the Four Corners region and the impacted region of the Dakotas, Wyoming and Montana as "National Sacrifice Areas." That is, areas rendered literally uninhabitable through the deliberate elimination of the total water supplies for industrial purposes (the aquifers are estimated to take from 5,000 to 50,000 years to effectively replenish them-

Public safety in the southern Black Hills: Chain link fence may keep people out of but not wind-blown tailings within official disposal areas. The location is very near populated areas (*Photo: Cynthia Martinez*).

selves) and proliferate nuclear contamination (some of which carries a lethal half-life from a quarter to a half million years). In other words, the destruction anticipated is effectively permanent.[55]

Needless to say, consummation of such plans would immediately eradicate Navajo and the so-called "Sioux Complex" as reservations. The largest block of landholdings remaining to American Indians within the United States would thus be lost utterly and irrevocably. The same situation would of course pertain to smaller reservations such as Hopi and most other Pueblos, Northern Cheyenne, Crow and possibly Wind River, which lie within the "sacrifice areas." The great likelihood is that the peoples involved, to the extent that they are not physically expended within the immediately projected extraction processes, would cease to function as peoples, once severed from their land base. Like the Klamath people who were "terminated" in the 1950s and never recovered their Oregon homeland, these newly landless nations would in all probability disintegrate rapidly, dissolving into the mists of history. By conventional English definition, such a prospect and such a process can only be termed genocide.[56]

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Nor is the situation in Canada appreciably different, in spirit if not in quantity and intensity. The James Bay power project undertaken through conjoint governmental and corporate efforts, for example, threatens to utterly demolish the habitat, lifeways and self-sufficiency of the Cree people in that area.[57] Comparable sorts of activity in virtually every province of Canada harbor the same results for various indigenous peoples.[58] The native peoples of the entire northern half of the Americas stand in imminent danger of being swallowed up and eliminated entirely by the broader societies which have engulfed their land.

For American Indians to opt toward the very processes sketched as being at work within this section, to embrace transient extractive "industrialism" as a "solution" to the sorts of problems they now confront, problems brought into being and fostered by the representative institutions of industrial control and consolidation itself, seems at best to be a self-defeating strategy. More likely, it promises participation in a route to self-liquidation or, to borrow a phrase from certain analysts of the recent holocaust in Kampuchea and to place it within a rather more accurate framework, to engage in "auto-genocide."[59] Whatever the short-run benefits in terms of diminishing the, by now, all but perpetual cycle of American Indian disease, malnutrition and despair generated by neocolonialism, the looming longer-term costs vastly outweigh them. In the next section, however, we shall examine whether even the short-term benefits perceived by such agencies of American Indian "progress" as CERT and many tribal councils as roads to prosperity and self-determination are more real or illusory in their immediate potentials.

Radioactive Colonization

> When the years before they had first come to the people living on the Ceboleta land grant they had not said what kind of mineral it was. They said they were driving U.S. Government cars, and they paid the land grant association five thousand dollars not to ask questions about the test holes they were drilling...Early in the Spring of 1943, the mine began to flood with water from the subterranean springs. They hauled in big pumps and compressors from Albuquerque...But later in the summer the mine flooded again, and this time no pumps or compressors were sent. They had enough of what they needed, and the mine was closed, but the barbed wire fence and guards remained until August 1945. By then they had other sources of uranium, and it was not top secret anymore...He had been so close to it, caught up in it for so long that its simplicity struck him deep inside his chest; Trinity site, where they had exploded the first atomic bomb, was only three hundred miles to the southeast, at White Sands. And the top-secret laboratories where the bomb had been created were deep in the Jemez mountains

on land the Government took from the Cochiti Pueblo: Los Alamos, only a hundred miles Northeast of him now, still surrounded by high electric fences...There was no end to it; it knew no boundaries; and he arrived at the point of convergence where the fate of all living things, and even the earth had been laid. From the jungles of his dreaming he recognized why the Japanese voices merged with the Laguna voices...converging in the middle of witchery's final ceremonial sand painting. From that time on, human beings were one clan again, united by the fate the destroyers had planned for all of them, for all living things; united by a circle of death that devoured people in cities twelve thousand miles away, victims who had never known these mesas, never seen the delicate colors of the rocks that had boiled up their slaughter.

– Leslie Marmon Silko –
Ceremony

Economic and labor analysts have argued on numerous occasions that improved labor relations and altered mineral development policies could, or would, tip the cost/benefit balance to the favorable side of the scale for American Indians. The careful examination of Lorraine Turner Ruffing in relation to such contentions ("A Mineral Development Policy for the Navajo Nation"), and information available through the Oil, Chemical and Atomic Workers Union (Denver, CO) combine with any fundamental understanding of the general environment in uranium producing regions to dispute notions that adjusting or "tuning" the production scenario will do much of anything to offset negative factors over either the long or short terms.

The circumstances correlated to the Navajo experience at Shiprock, Churchrock, Tuba City and elsewhere and, in a slightly different sense, the experiences of the Lakota to the north are not anomalies. There is, and can be, no "safe" uranium mining, processing, or waste disposal, either now or in the foreseeable future. Such facts can be denied, they can be argued upon debater's points or the exclusivity of narrow ranges of technical "expertise," but they cannot be made to go away in the real world where people and environments become contaminated, sicken and die.

We have already seen how the energy corporations and the government use local Indian work forces at the lowest possible wage, paying little if any heed to community safety, avoiding both severance taxes to cover the community costs incurred by their presence and land reclamation costs to cover even the most lethal of their damages upon departure, and paying the absolute minimum rate in royalties for the milled ore they ship. Equally, we have seen that the nature of the destruction they anticipate creating, and do create, as an integral aspect of their "productive process" is such that there can be *no* further tribal development, post mining. It is unlikely that much

beyond the level of amoeba will be able to survive in a National Sacrifice Area, once sacrificed.

In other words, long-term consequences foreclose upon short-term advantages where the uranium production process is concerned. Of course, the "right" Indian negotiator might be able to bargain the royalty rates to a higher, more "acceptable" level; say two, or five, or ten times the going rate in Indian country. But, to what avail? This short-run "gain" is a mirage. No matter what magnitude of cash flow is generated from such resource sales by tribal managerial elites, it can only be "invested" in a homeland which is soon to be uninhabitable, a people soon to be extinguished. Cash can never be sufficient to replace either the homeland or the people. Adjustments to the rate of exchange are thus ultimately irrelevant to the issue at hand, whether over the next two decades, or the next twenty.

The only possibility of even short-term benefits, then, lies in the improbable possibility that a preponderance of tribal members, people who, despite personal confusions of identity and a grinding poverty lasting for generations, have clung steadfastly to overall notions of Indianness and maintained a firm embrace of their homelands, are somehow now prepared to abandon these things for the external reality of the dominant culture. In order for even this dubious prospect to be more than mere illusion, however, the uranium development option (and other energy development options as well) must be both survivable *to participants* (which includes, from an Indian perspective, the ability to bear healthy children, the "unborn generations" leading to familial/cultural survival), and offer them not only a cash reserve, but the skills and employment situation through which to successfully enter the "mainstream."

The question thus becomes whether in fact there are means available through which such short-run considerations might be met, assuming that Indians desired them. In this connection,, it would seem that unionization might provide a key to success. The Oil, Chemical and Atomic Workers Union (OCAW) is the largest and most influential worker's force within the uranium industry. Although not all miners are unionized within the Grants Uranium Belt of the Southwest, the OCAW has been successful in pressuring the overall uranium industry to a degree. To begin with, the union has essentially achieved standardization of conditions for all miners within the area – union or non-union – brown, red, black, or white.

As a result, conditions such as those prevailing in the Shiprock mine during the 1950 became uncommon, even exceptional, by the '80s. Yet the industry, by OCAW estimation, remains one of the most dangerous in every phase.[60] Primary union concerns, and actions, have been devoted to increasing worker safety conditions within the mines. In one year, 1967, 525

men were seriously injured in the mines of New Mexico alone; seven of them died. But these are problems which prevail across the mining industry as a whole. The more insidious hazards associated with uranium mining – and the ones which claim the heaviest toll – are those involving chemical and radiation contamination.

In this regard, the OCAW has been active in opposing the "bonus system," the practice by which corporations reward miners financially for operating in "hot spots" and/or working higher grade ore than is normally handled. In essence, the union argues that such sustained exposure as is expected of miners performing under the bonus system virtually guarantees contamination (and an early death), and that the corporations are intentionally down-playing the risks involved. The OCAW has also held that "worker rotation systems" for working hot spots and super-rich ore – often without the benefits of extra pay – fails to solve the contamination problem, serving instead to spread potentially lethal concentrations of radiation – on the order of 6.5 times maximum "safe" dosages – throughout the entire work force.[61]

In some respects, then, OCAW might be viewed as affording a means by which initial steps have been taken to provide tangible worker safety. In addition, the union has proven quite successful in attaining real wage increases for miners across the board, whether or not they belong to OCAW. But, in fairness, it must be said that the union has ultimately succeeded in eliminating the most extreme forms of abuse routinely conducted by management (such as operating deep shafts without ventilation), while merely exposing rather than correcting the more generic varieties. In this sense, while it is certainly a more humane and progressive entity than the corporations it confronts, it represents no *solution* to the problems with which it deals. Additionally, many of the strategies through which the union has proposed to force wage increases and improved safety standards are much better suited to the usual, highly mobile mine labor force than to "reservation bound" Indian miners.

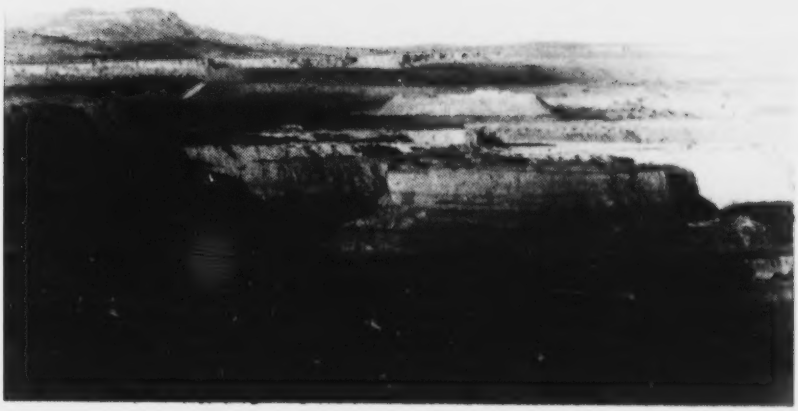
Similarly, a number of improvements attained by the OCAW in behalf of its miner constituency have, perversely, worked to the detriment of the Indian miners' home communities. Consider the matter of mine ventilation: The uniform installation of proper ventilating blowers within mine shafts is unquestionably a major gain for miners. For transient miners, this is essentially the end of the story: a gain. But, for those whose intention it is to live out their lives within the mining community, and to have their children and their children's children live out *their* lives in the community as well, the question of what becomes of radioactive dust blown from the mine shafts assumes a critical importance.

The answer, of course, is into the air of the community, from which it settles *upon* the community. Hence, the gain to the Indian miner in terms of increased work place safety for him/herself is incurred at the direct expense of his/her permanent community. The Gulf operated Mt. Taylor mine located in San Mateo, New Mexico has been a significant site of such problems. It is but one of many. The town of Questa, New Mexico has its elementary school built upon a dry tailing pond, at the foot of a tailing pile, situated near shaft ventilators. The OCAW maintains, perhaps rightly, that such matters are beyond its purview. But this leaves the concept of unionization voided in a very important respect for Indian miners and their communities[62].

Short-run considerations of the ultimate survivability of uranium production are heavily skewed to the negative, both for participating miners and for participating communities. In view of this fact, concerns with short-term income (wage) benefits seem rather beside the point. There is obviously little advantage to be gained in achieving short-term economic "security" from an occupation which is not only directly and rapidly killing you, but your family and future offspring as well. Illustrations are not difficult to come by.

All uranium producing American Indian nations, and the individuals who comprise them, are in the position typified by Navajo's Churchrock community: They are economic hostages of the new colonialism. For example, approximately 7,000 acres of the 418,000-acre Laguna Pueblo land holding is leased to the Anaconda Corporation. The Laguna posture in entering into the leasing agreement was to secure royalty revenues for the group, and jobs/income for individuals within the group. In effect, the land has passed under Anaconda's eminent domain. Anaconda operated uranium stripping operation at Laguna from 1952 until 1981 when, as in the case of Kerr-McGee's Shiprock mine, profitably extractible ore played out. During the operating years, the pueblo's IRA government negotiated an agreement with the corporation whereby Laguna applicants would receive priority hiring to work in the reservation mine. The practice was quite successful, with some 93% of the Anaconda labor force ultimately accruing from the pueblo. As the mining operation expanded over the years, so did the work force, from 350 in 1952 to a peak of 650 in 1979.[63]

Wages to miners, relative to average *per capita* incomes on reservations, were quite high, and the concentration of miners within the tiny Laguna population established it as one of the "richer" all-round Indian nations in the U.S. by the early to mid-1960s.[64] Throughout the 1970s, unemployment among Lagunas averaged approximately 25%, quite high by non-Indian standards, but less than half the average reservation rate. Further, royalty payments and other mechanisms allowed the Lagunas to symbolically break certain important aspects of the typical reorganization-fostered dependency upon the



The Jackpile Mine as it appears today (*Photo: Cynthia Martinez*).

federal government. By 1979, former Laguna governor Floyd Correa was able to state in an interview that, of the tribal unemployed, only twelve were collecting unemployment benefits (as compared to the estimated 20% of the total labor force collecting benefits on most reservations at any given moment). Upon superficial examination, the Lagunas seemed well on the road to recovering the self-sufficiency which had long since passed from the grasp of most North American indigenous nations.

The bubble burst when Anaconda abruptly pulled up stakes and left the husk of their mining operation: a gaping crater and, of course, piles of virulently radioactive slag. Over the years, Laguna's negotiating position had steadily deteriorated as the absolute centrality of the Anaconda operation became apparent to the people – and to the corporation. Consequently, very little provision was built into lease renewals which would have accommodated clean-up and land reclamation upon conclusion of mining activities. It will likely cost the pueblo more to repair environmental havoc wrought by the corporation than it earned during the life of the mining contract.[65] And, unlike Anaconda, the Laguna people as a whole cannot simply move away, leaving the mess behind. Nor can individual workers. The abrupt departure of Anaconda left the preponderance of the reservation's income earners suddenly jobless. Here, a cruel lesson was to be learned. The skills imparted through training and employment in uranium mining are not readily translatable to other forms of employment, nor are they particularly transferable

without dissolution of the tribal group itself (*i.e.*, miners and their families moving away from the pueblo in order to secure employment elsewhere). Meanwhile, the steady thirty-year gravitation of the Laguna population toward mining as a livelihood caused a correspondingly steady atrophy of the skills and occupations enabling the pueblo to remain essentially self-sufficient for centuries.

Whether or not the former Anaconda employees can "adjust" to their new circumstances and make a sort of reverse transition to more traditional occupations and/or secure adequate alternative employment proximate to the reservation may be in some respects a moot point. While not as pronounced as in the deep shaft mining areas on the Navajo Nation, the pattern of increasing early deaths from respiratory cancer and similar ailments – as well as congenital birth defects – has become steadily more apparent on the reservation.[66] Most of the afflicted no longer retain the insurance coverage, once a part of the corporate employment package, through which to offset the costs of their illness (and those suffered by relatives within the extended family structures by which the pueblo is organized). Thus, the ghost of Anaconda is eating the personal as well as collective savings accruing from the mining experience.

It seems safe enough to observe that the short-term benefits perceived at Laguna were more illusory than real. Although a temporary sense of economic security was imparted by the presence of a regular payroll, and the "stability" of a "big time" employer, there was never time to consolidate the apparent gains. Costs swiftly overtook gains, although the pueblo was not necessarily immediately privy to the change of circumstances. In the final analysis, Laguna may well end up much more destitute, and in an infinitely worse environmental position, than was ever the case in the past. As if to underscore the point, water has become a major problem at Laguna, one which may eventually outweigh all the others brought about by its relatively brief relationship with Anaconda. The Rio Paguate River, which once provided the basis for irrigation and a potentially thriving local agriculture, now runs through the unreclaimed ruins of corporate flight. As early as 1973, the federal Environmental Protection Agency (EPA) discovered that the strip mining operation was contaminating the Laguna water supply.[67]

With agricultural and cattle raising production withering under the glare of higher paying and more "glamorous" work in the mine, the pueblo converted to ground water in meeting all, rather than a portion, of its potable needs. In 1975, however, the EPA returned to find widespread ground water contamination throughout the Grants Mineral Belt, including that under Laguna.[68] In 1978, the EPA was back again, this time to inform the Lagunas that *all* of their available water sources were dangerously contaminated by

radioactivity, and that the tribal council building, community center and newly constructed Jackpile Housing – paid for in substantial proportion by royalty monies – were all radioactive as well.[69] Additionally, Anaconda had used low grade *uranium ore* to "improve" the road system leading to the mine and village.[70]

Hence, even were the Lagunas able to reclaim the land directly associated with what was once the world's largest open pit uranium mine (preceding Namibia's Rossing Mine for this dubious distinction), no small feat in itself, and even if they were somehow able to avert the seemingly impending carcinogenic and genetic crises, restore an adequate measure of employment and tribal income, and clear up at least the direct sources of contamination to the Rio Paguate, they would *still* be faced with the insurmountable problem of contaminated ground water (which can accrue from quite far flung locations). And, if they have had enough of such "progress" and wish to attempt a return to the agriculture and animal husbandry which stood them in such good stead for generations? Then they will *still* have to contend with the factor of disrupted ore bodies which persist in leaching out into otherwise reclaimed soil.

When such leaching occurs, radioactive contaminants are drawn into the roots of plants. Animals, whether human or otherwise, consuming contaminated plants likewise become contaminated. This too may well be an unsurmountable problem. It seems likely that the damage is done and irreparable, that the way of life the Lagunas have known, and with which they identify and represent themselves as a people, is gone forever. And in exchange? Nothing. At least, nothing of value, unless one wishes to place a value on radioactive community centers and road repairs. Or unless one wishes to consider as valuable the bitter legacy and lessons learned as an example from which to base future plans and future actions.

Laguna is not unique in the nature of its experience. The examples earlier drawn from the Navajo Nation and the Lakota territory should be sufficient to demonstrate that. Dozens, scores, even hundreds of additional examples might be cited from Hopi, from Zuni, Acoma, Isleta, Crow, Northern Cheyenne and elsewhere in the U.S., and form the Cree, Métis, Athabasca and other territories of Canada through which to illustrate the point. One other example within the U.S. might be drawn upon to nail things down. This concerns the Department of Energy's nuclear facility at Hanford, on the boundary of the Yakima Nation in central Washington State. Designed on the same pattern as the ill-fated Soviet plant at Chernobyl, Hanford was used for 40 years to produce weapons grade fissionable material. Finally closed down in 1987, when officials became concerned that a Chernobyl-style disaster might occur there, Hanford was still described by the federal government (in

response to growing local concerns about health hazards inherent to the plant) as having functioned in a "safe and essentially accident-free fashion" throughout its operational existence. Finally, in July of 1990, government spokespersons admitted that the weapons facility had been since the early '50s secretly dumping radioactive wastes into the environment at a level at least 2,000 times greater than those officially deemed "safe." In sum, the residents of Yakima have been exposed to far greater concentrations of radiation – *as a matter of course* – than were those Soviet citizens living in or near Chernobyl during the near melt-down of the reactor there. Further, they, unlike their counterparts in the USSR, had been unknowingly exposed to the contamination for decades.[71]

It should by now be plain that there is neither short- nor long-term advantage to be gained by indigenous nations in entering into energy resource extraction agreements. Advantage accrues only to the corporate and governmental representatives of a colonizing and dominant industrial culture. Occasionally it accrues momentarily, and in limited fashion, to the "Vichy" tribal governments they have reorganized into doing their bidding. For the people, there is only expendability, destruction and grief under this new colonization. Ironically, the situation was spelled out in the clearest possible terms by Los Alamos Scientific Laboratory, the site of the birth of "controlled" nuclear fission, in its February, 1978 *Mini-Report*:

> Perhaps the solution to the radon emission problem is to zone the land into uranium mining and milling districts so as to forbid human habitation.

In this light, the choices for uranium rich, land-locked reservation populations are clearly defined. For some, there is cause for immediate retreat from engagement in the uranium extraction process. For others, it is a matter of avoiding a problem not yet begun. In either case, such a choice will necessitate an active resistance to the demands and impositions of the new colonizers.

It seems certain that those who would claim "their" uranium to fuel the engines of empire, both at home and abroad, will be unlikely to accept a polite (if firm) "no" in response to their desires. Strategies must be found through which this "no" may be enforced. Perhaps, in the end, it will be as Leslie Silko put it, that "human beings will be one clan again" united finally by "the circle of death" which ultimately confronts us all, united in putting an end to such insanity. Until that time, however, American Indians, those who have been selected by the dynamics of radioactive colonization to be the first twentieth century national sacrifice peoples, must stand alone, or with their immediate allies, for a common survival. It is a gamble, no doubt, but a gamble which is clearly warranted. The alternative is virtual species suicide. There are bright spots within what has otherwise been painted as a bleak portrait of contemporary Indian Country. It is to these, the representations of the gamble, and what must be hoped are the rudiments of an emerging strategy of resistance, to which we now turn.

It Was That Indian

Martinez
from over by Bluewater
was the one who discovered uranium
west of Grants.
He brought the green stone
into town one afternoon in 1953,
said he found it on the tracks
over by Haystack Butte
Tourist magazines did a couple of spreads
on him, photographed him in kodak color,
and the Chamber of Commerce celebrated
the Navajo man.
forget for the time being
that the brothers
from Aaqu west of Grants
had killed that state patrolman,
and nevermind also
that the city had a jail full of Indians.
The city fathers named
a city park after him
and some even wanted to put up a statue
of Martinez but others said
that was going too far for just an Indian
even if he was the one started that area
into a boom.

Well, later on, when folks began to complain
about chemical poisons flowing into streams
from the processing mills, carwrecks on
Highway 53,
lack of housing in Grants,
cave-ins at Section 33,
non-union support,
high cost of living,
and uranium radiation causing cancer,
they – the Chamber of Commerce –
pointed out
that it was Martinez
the Navajo Indian from over by Bluewater
who discovered uranium
it says in this here brochure,
he found the green stone over by Haystack
out behind his hogan;
it was that Indian who started that boom.

– Simon J. Ortiz –

Non-Indian America, Euroamerica in particular, has a long and sorry history of blaming the victims of its criminal abuse for the existence of that abuse. Perfectly sincere young professors at Midwestern universities are wont to stand and observe in all seriousness that "the Indians fought each other before the white man came," in a context implying that there is really nothing differentiating traditions of counting coup on the one hand, and wars of annihilation on the other. We are, after all, the same. Others smugly point out that Indians killed the buffalo, often in large numbers, before the advent of professional buffalo hunters. Implication? The extermination of an entire species, in the end as a military tactic, is no different in kind than subsistence hunting. The Indian, it is presumed, will be stifled from complaint by the "fact" of having set an example of butchery for his wanton western brothers.[72]

Again, serious scholars pronounce that dispossession of the Lakota – for example – from their land is little basis for complaint, "given that the Sioux ran the Crows off *their* land, too." Never mind that the Lakota action resulted from the fact that Anishinabes, well-armed with muskets gleaned from the fur trade had – when being shoved west by encroaching whites – in turn pushed the Lakota, who lacked comparable weaponry, westward into Crow country.[73] Never mind, too, that the Crows, who fought with the U.S. Army rather than against it, and whom no one claims did much dispossessing of anyone, were as readily stripped of their land as were the Lakota. The fate of the Lakota was sealed – through some process of cosmic justice – in the "nature of their own traditions" according to the conventions of liberal Euro-American academe.[74] Today, the American Indian suffers from the infliction of radioactive colonization. To be sure, it may be rightly contended that Indians have participated, often willingly, in that process. The question which occurs as a result of this obviousness is whether, once again, a form of logical convolution will be applied thereby through which to blame the Indian for his/her fate. And, if such distortive blame is applied, will it be used, as it usually has been, to fabricate a justification for and sanction of the *status quo*?

In political terms, such an attitude, whether overtly or subtly expressed, has generally led to the assumption that – defects of their own cultures somehow having brought them to their contemporary pass – Indians inherently require, and deserve, non-Indian ideology and leadership. To put it another way, the Indian has proven "weak" in a Darwinian sense, has through such weakness been overrun and left prostrate by the "stronger" culture of Europe, and must now be subsumed as a small but integral component of European conceptions of revolution currently employed against the equally Eurospecific notions of imperialism which generate Indians' (and everyone else's) oppression. For all its "liberatory" veneer, such an outlook

is fundamentally similar to that of the current oppressor; it preserves, essentially intact, the prevailing and entirely objectionable status quo of American Indian subordination to an external and dominant culture reality, both at the conceptual and at the physical levels.[75]

The pattern of victim-blaming mentality underpinning the ideology of most imported "cultures of resistance" within this hemisphere has also led to certain highly distortive strategic assumptions on the part of those purporting to combat North American imperialism from within.[76] Concern with economies of scale has lead non-Indian dissidents to ignore or dismiss the Indians of North America as a critical element (real or potential) of anti-imperial struggle, primarily because of their small numbers. Discounting the fact of American Indian existence *per se* necessarily leads to the overlooking of indigenous colonial status and the contemporary existence of territorially defined colonies *within* the physical confines of the North American imperial powers.[77] This, to be sure, is no small oversight.

If Indian reality is effectively voided at the intellectual level of avowed anti-imperialists, the result is the view which seems most commonly held among non-Indians: that of the U.S. and Canada as possessing an essentially seamless (except for class conflicts) internal integrity and hegemony through which their imperialism is uniformly exported to other, usually Third World, nations. Preoccupation with the effects of colonialism, and with indigenous efforts to offset it, thus centers on North America's satellites, seldom upon the continent itself. Such an erroneous view generates a cumbersome method of countering imperial policy, slashing as it does always at the tentacles, never at the heart.[78]

This essay has attempted to show why colonies exist within the countries of North America. Further, it has sought to explain the absolutely crucial nature of the existence of these colonies, by virtue of resource distribution and production, to the maintenance and expansion of North American imperialism. Finally, it has tried to provide a critical insight into the internal colonial methods employed, and the impact of those methods upon the populations most immediately and directly impacted by them: the resident populations of the colonies themselves, American Indians. It is to be hoped that within such an articulation lie the seeds of an analysis pointing to an anti-imperialist mode of action which transcends the victim-blaming and misorientation marking past practice.

Within the structural properties and physical characteristics of North American internal colonialism lie the levers with which a properly focused anti-imperialist effort can begin to pry apart the skeletal components of the imperial nations themselves. The application of the broadest possible support to the internationally acceptable (among Third World nations, for

example) principal of the sanctity and sovereignty of Indian treaty territories would carry a considerable challenge of and jeopardy to the physical integrity of both the U.S. and Canada. Perhaps even more crucial is that the specific areas most in question in this regard are such that both nations would find themselves denied ease of access to a major proportion of their strategic reserves of vital raw materials. Similarly, *any* exertion of *real* tribal sovereignty over the treaty territories would serve to curtail an array of both nations' internal production capabilities, both in terms of denying conveniently "remote" locations, and in denying the water upon which many – if not most – industrial processes depend.

Clearly, such a turn of events would prove crippling to imperialism in ways which confronting its presence within the satellite colonies abroad never has, and in all probability never can. Not that facing the facts of the matter provides a panacea, a magic act through which such conditions can be actualized at a stroke. The treaties and other factors at issue have existed all along, and are well known to both corporate and governmental managers. For what must be obvious reasons, such managers have systematically declined to honor the treaties, to respect American Indian ownership of much of the contemporary basis of North American power. Implementation of treaty terms and provisions, with all that this implies, will necessarily entail a considerable and sustained struggle on the broadest possible popular basis.

The question thus emerges as to who is to lead such a struggle, to provide it form and direction in its day-to-day development. Here, an utter inversion of the principal of blaming the victim and its accompanying orthodoxy of Euro-derived movements is indicated. Currently representative leaders and movements know little of treaties, their implications and practical potentials in the global arena. Nor is the extent of American Indian territorality, water rights, resource holdings and the like – both current and potential (by virtue of treaty rights) – particularly well understood outside the circles of Indian activism. Nor has the background and experience of most non-Indian anti-imperialists especially suited them for direct interaction with and grassroots organization of the internal colonial populations. All of this combines to present a rather poor case for American Indians being led by non-Indians in any struggle to dismantle the North American internal colonial structure. To the contrary, it points very clearly to the prospect that a real and highly visible Indian leadership component of any North American anti-imperialist movement must be accepted as a prerequisite to success, either in whole or in part.

Native people have, after all, been forced to live in the very front lines of the colonial process, through no choice of their own, for generations. They, among all the people of America, have been imbued with a comprehensive understanding of that process at the most practical level. Inadvertently, this

knowledge, and their geographical disposition, has placed them in a position at the very cutting edge of any emergent contestation of North American political economy, regardless of the numerical status of their population and other factors. Hence, the recent actualization of certain American Indian (or Indian led) activist formations and the undertaking of certain actions by these formations should be viewed with hope, as bright spots in what is otherwise a deadening panorama of horror.

The first, and perhaps most obvious, of these has been the founding and continuation of the American Indian Movement (AIM), despite the most virulent forms of governmental/corporate repression both in the United States and in Canada. Beginning with a series of well-chosen and highly visible actions – occupation of Alcatraz Island during 1969-70, occupation of the replica of the Mayflower in Massachusetts in 1971, the Trail of Broken Treaties to Washington, D.C. in 1972, occupation of Mt. Rushmore in the Black Hills the same year, defense of the besieged hamlet of Wounded Knee on the Pine Ridge Reservation in 1973, and so on – AIM has sustained itself and grown despite the mass murder of its membership (more than 60 killed between 1973 and 1976 on Pine Ridge alone),[79] mass trials (an estimated 500 during the same period),[80] and imprisonment of most of its original leadership.[81] In so doing, it has served as a galvanizing force for important sectors of the indigenous population in North America.

Today, AIM has evolved from its formative structure, based to some extent on the organization of the Black Panther Party, to a multilayered, multifaceted network of activists bound together through a common understanding of the rights of native populations, the environmental consequences of the imperial process, and the need for direct action rather than rhetoric. As an aspect of its evolution, AIM has become thoroughly internationalized and has generated a number of spin-off efforts and organizations addressing particular segments of the overall struggle.[82] At some level or another, it is fair to say that virtually every Indian and/or environmentally-focused entity functioning in North America today does so on the basis of the participation of present or former AIM activists, as well as utilization of positions developed by AIM over the past two decades.

Among the more noteworthy derivative efforts has been the International Indian Treaty Council (IITC), established at the urging of traditional Lakota elders in 1974, during the aftermath of the Wounded Knee siege. IITC sent delegations to the Palace of Nations in Geneva, Switzerland at the invitation of the United Nations beginning in 1977 to testify as to the nature and function of neocolonialism in the Americas. It attempted to establish a permanent liaison with the U.N. and ongoing relations with (and a communications net including) many of the nations indigenous to Central and

South America.[83] IITC's primary function through all of this was to attain international understanding of and support for the specific treaty guaranteed prerogatives of various Indian nations.Although it is no longer able to discharge its responsibilities in these connections, IITC did manage to open up avenues along which other indigenous (but more traditionally-grounded) organizations such as the Indian Law Resource Center and National Indian Youth Council have been able to move with increasing effectiveness in the international arena during the 1980s.

Another AIM spin-off, and one which should be carefully studied by non-Indian and Indian activists alike, was the Black Hills Alliance. Within this coalition of various regional organizations, native people held a very strong but hardly exclusive leadership position. The formal board of directors was composed not only of AIM members, but also miners, clergy, area ranchers and at least one former John Birch Society member (who professes to have shot at AIM people only a few years before). Using treaty rights and the environment as *first* points of contention, this amalgamation was been able to successfully articulate a practical program of anti-imperialism within their area which stressed the commonality of issues between Indians and non-Indians.[84]

By adopting such a posture, the Alliance was able to assume a position in the very forefront of local resistance to wholesale mining, uranium production, water diversion, land expropriation (from ranchers and Indians alike), and so forth. It was also able to mount the 1979 and 1980 Black Hills International Survival Gatherings which, again, formulated a strategy wherein Indian treaty rights were viewed as the key to countering governmental/corporate processes detrimental to the population as a whole, *and* drew unprecedented numbers of non-area activists to the Black Hills region.[85] Having successfully opposed nuclear dumping at Edgemont and the ETSI initiative, the Alliance essentially dissolved, its membership going on to serve a cadre in other local, regional or national organizations.

While a number of other events and circumstances across the face of Indian Country could be cited to underscore the point being made, the preceding examples should be sufficient to render credible the observation that the rudiments of a serious, seasoned and effective internal anti-imperialist movement currently exist within AIM and conceptually affiliated organizations. That such a movement must expand tremendously in scale before it can hope to attain its ultimate goals is undeniable. That such expansion can occur within North America only through the attraction of non-Indian allies is equally unquestionable. Here, both the model offered by the Black Hills Alliance, and the earlier mentioned inversion of the usual non-Indian agendas and priorities become crucial.

The struggle currently shouldered by AIM is not merely "for Indians," it is for everyone. To resolve the issue of the colonization of the American Indian, would be, at least in part, to resolve matters threatening to the whole of humanity. In altering the relations of internal colonialism in North America, "the AIM idea" would vastly reduce the capability of the major nations there to extend their imperial web into Central and South America, as well as Africa, Asia and the Pacific Basin. In denying access to the sources of uranium to the industrial powers, American Indians could take a quantum leap toward solving the problem of nuclear proliferation. In denying access to certain other resources, they could do much to force conversion to renewable, non-polluting alternative energy sources such as solar and wind power. The list could be extended at length.

Ultimately, the Lagunas, the Shiprocks, Churchrocks, Tuba Cities, Edgemonts and Pine Ridges which litter the American landscape are not primarily a moral concern for non-Indian movements (although they should be that, as well). Rather, they are pragmatic examples, precursors of situations and conditions which, within the not-so-distant future, will engulf other population sectors; which, from place to place, have already begun to actively encroach in a more limited fashion. Circumstance has made the American Indian the first to bear the full brunt of the new colonialism in North America. The only appropriate response is to see to it they are also the last. The new colonialism knows no limits. Expendable populations will be expended. National sacrifice areas will be sacrificed. New populations and new areas will then be targeted, expended and sacrificed. There is no sanctuary. The new colonialism is radioactive; what it does can never be undone. Left to its own dynamics, to run its course, it will spread across the planet like the literal cancer it is. It can never be someone else's problem; regardless of its immediate location at the moment, it has become the problem and peril of everyone alive, and who will be alive. The place to end it is where it has now taken root and disclosed its inner nature. The time to end it is now.

Notes

1. See Garrity, Michael, "The U.S. Colonial Empire is as Close as the Nearest Reservation" in *Trilateralism: The Trilateral Commission and Elite Planning for World Management*, Holly Sklar, ed., South End Press, Boston, 1980, pp. 238-268.

2. For an overview on the similarities of the situations prevailing in the U.S. and Canada, see Getty, Ian L. and Donald B. Smith, *One Century Later: Western Canadian Reserve Indians Since Treaty 7*, University of British Columbia Press, Vancouver, 1978. A more specific historical case study is provided in Fisher, Robin, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, University of British Columbia Press, Vancouver, 1977.

3. See Deloria, Vine, Jr., and Clifford E. Lytle, *American Indians, American Justice*, University of Texas Press, Houston, 1984.

4. See LaDuke, Winona, "Indian Land Claims and Treaty Areas of North America: Succeeding into Native North America," *CoEvolution Quarterly*, No. 32, Winter, 1981, pp. 64-65. The map accompanying this article is a composite based directly upon the definitive "Royce Maps" compiled for the U.S. Bureau of Ethnology during the 1890s.

5. Cruz, Roberto, "U.S. Forced Cessions of Papago Land and Resources During the 20th Century," unpublished paper prepared at the Harvard School of Economics, Cambridge, MA, 1978, pp. 17-18.

6. See the map of Lakota (forced) cessions of 1868 treaty land contained in Dunbar Ortiz, Roxanne, *The Great Sioux Nation: Sitting in Judgement on America*, International Indian Treaty Council/Moon Books, New York/San Francisco, 1977, p. 94.

7. See Price, Monroe E., *Law and the American Indian: Readings, Notes and Cases*, Bobbs-Merrill, Co., New York, 1973, pp. 310-328. Also see Deloria and Lytle, *op. cit.*

8. Internal Council of Energy Resource Tribes memorandum, Smith to McDonald, June 12, 1977.

9. Concerning uranium mining on indigenous land in Canada, see Goldstick, Miles, *Wollaston: People Resisting Genocide*, Black Rose Books, Montréal, 1987. Also see Hardin, Jim, "Indigenous Rights and Uranium Mining in Northern Saskatchewan," in Ward Churchill (ed.), *Critical Issues in Native North America* (Volume I), International Work Group on Indigenous Affairs, Copenhagen, 1989, pp. 116-36.

10. See for example, the map of aggregate native land cessions in the U.S. comprising the first illustration accompanying this essay.

11. See *The Navajo Nation: An American Colony*, Bureau of Indian Affairs, U.S. Department of the Interior, U.S. Government Printing Office, Washington, D.C., 1976, inclusive.

12. The way in which the first "modern tribal council," that of the Navajo Nation, was brought into being is instructive. During the 1920s, several emerging U.S. energy corporations (primarily Standard Oil) desired to obtain exploratory leases to seek coal, oil and natural gas within Navajo territory. These corporate overtures were flatly rejected by the then prevailing traditional Navajo leadership. In 1980, the U.S. Bureau of Indian Affairs – at the behest of corporate lobbyists – created a new "Navajo Grand Council" to represent the nation. This new entity, proclaimed by the Bureau as being the sole "legitimate" instrument of Navajo governance, contained not one of the traditional leaders , accruing their sanction and authority from the Navajo people. Rather, it was composed of a hand-picked group of "progressives" trained in white boarding schools and universities. Predictably, the new council shortly delivered the desired leasing agreements to the concerned corporations. This experiment in creating puppet governments to administer tribal politico-economic affairs, harkening as it does back to Washington's long-standing policy of unilaterally designating "chiefs" of various indigenous nations for purposes of treaty signing (*e.g.*, justifying tribal land cessions), was deemed so successful that it was soon adopted by U.S. Indian Commissioner John Collier in his 1934 "reorganization" of American Indian affairs. See Kammer, Jerry, *The Second Long Walk*, University of New Mexico Press, Albuquerque, 1978.

13. *The Navajo Nation, op. cit.*

14. *Ibid.*

15. See *the TREATY* (True Revolution for Elders, Ancestors, Treaties and Youth), a campaign document produced by the Dakota American Indian Movement, General Delivery, Porcupine, SD, 1983.

16. See *A Statistical Portrait of the American Indian*, DHEW/U.S. Bureau of the Census, U.S. Government Printing Office, Washington, D.C., 1976, p. 19; data not appreciably changed during intervening 7 years according to statement by U.S. Secretary of the Interior James Watt on May 19, 1982. Circumstances in Canada are brought out in *One Century Later, op. cit.*

17. Zannis, Robert and Mark Davis, *The Genocide Machine in Canada*, Black Rose Books, Toronto, Canada, 1973, p. 93.

18. See *Report of the Ad Hoc Committee Investigating Circumstances Surrounding Forced Relocation of Dine and Hopi People Within the Navajo/Hopi Joint Use Area, Arizona*, Big Mountain Legal Defense/Offense Committee, 124 N. San Francisco, Flagstaff, AZ., 1984. Also see *Report to the Kikmongwe*, American Indian Law Resource Center, Washington, D.C., 1979.

19. See *A Statistical Portrait of the American Indian*, op. cit. For purposes of this essay, "North" America is not considered to include Central American areas. However, the data suggests that direct comparison of the situation of U.S./Canadian/northern Mexican "national" Indian populations to those of Belize, Honduras and Nicaragua (as examples), or to various South American Indian populations, would *not* demonstrate that those living in the "developed" north are particularly better off. To the contrary, literature concerning groups such as the Yanomami and the Jivaro of the Amazon Basin region suggest that indigenous populations tend to enjoy a relatively *higher* standard of living when allowed to enjoy their traditional "primitive" subsistence economies.

20. Durham, Jimmie, "Native Americans and Colonialism," *The Guardian*, New York, March 28, 1979, p. 40.

21. It seems probable that the term "Fourth World" will be confusing to some readers. In essence, the concept derives from the conventional notion that geopolitical reality assumes the configuration of having an industrially developed capitalist order (the First World) counterposed to an industrially developed socialist order (the Second World). Hovering between these two poles is a mass of former colonies now pursuing a course of more or less "independent" industrial development (the Third World). Those who have attempted to place traditional tribal peoples – peoples who have never adopted, or who have come to reject the industrial ethos – within this tidy three-part spectrum have been left frustrated. In terms of traditional indigenous populations, the definitions of contemporary convention yield little (if any) explanatory power. This has led to the evolution of the theory that there is a *Fourth* World or, perhaps more appropriately stated, a *Host World* of indigenous cultures and societies upon which the various variants of industrialism have been built. These continue to exist, essentially intact, despite the imposition of various industrialized structures upon them. According to the International Work Group for Indigenous Affairs, "The Fourth World is the name given to the indigenous peoples descended from a country's

aboriginal population and who today are completely or partly deprived of the right to their territory and riches..." Conceptualization of means to preserve and revitalize the Fourth World/Host World has led lately to a stream of theory and activism loosely termed as "indigenism." Among the better print items available within this context are the final chapter of Wyler, Rex, *Blood of the Land: The FBI and Corporate War Against the American Indian Movement* (Everest House, New York, 1982) and Diabo, J.R., "The Emergence of Fourth World Politics in the International Arena" (unpublished paper presented at the 1984 Western Social Science Association Conference in San Diego, CA). See also Berg, Peter, "Devolving Beyond Global Monoculture," *CoEvolution Quarterly*, No. 38, Winter, 1981, pp. 24-30. For a dissenting view on pursuit of a Fourth World ideology, from within the indigenist movement itself, see Ortiz, Roxanne Dunbar, "The Fourth World and Indigenism: Isolation and Alternatives," *Journal of Ethnic Studies*, Vol. 12, No. 1, Western Washington University, Bellingham, WA, Spring 1984.

22. In addition to the Navajos employed as underground miners by Kerr-McGee during this period, somewhere between 300 and 500 more were involved in "independent" or Small Business Administration-backed operations going after shallow (50 ft. or less) deposits of rich uranium ore which was sold in small lots to an Atomic Energy Commission buying station located at the Kerr-McGee milling facility. They left behind between one and two hundred open shafts. See Tso, Harold and Laura Mangum Shields, "Navajo mining Operations: Early Hazards and Recent Interventions," *New Mexico Journal of Science*, Vol. 20, No. 1, June, 1980, p. 13.

23. LaDuke, Winona, "The Council of Energy Resource Tribes, An Outsider's View In," unpublished report prepared for Women of All Red Nations, General Delivery, Porcupine, SD, 1979 and available through the International Indian Treaty Council, 777 United Nations Plaza, New York, NY, p. 31.

24. Sorenson, J.B., "Radiation Issues: Government Decision Making and Uranium Expansion in Northern New Mexico," San Juan Basin Regional Uranium Study Working Paper No. 14, Albuquerque, NM, 1978, p. 39. Also see LaDuke, Winona, "The History of Uranium Mining," *Black Hills/Paha Sapa Report*, Vol. 1, No. 1, Rapid City, SD, 1979, p. 2 and McCleod, Christopher, "New Mexico's Nuclear Fiasco," *Minnesota Daily*, August 8, 1979, p. 5.

25. Best, Michael, and William Connally, "An Environmental Paradox," *The Progressive*, New York, October, 1976, p. 20. Also see Wagoner, J.K., "Uranium, The U.S. Experience," *Testimony*, Vancouver, BC, World Commission Inquiry (into nuclear energy), April, 1980.

26. Barry, Tom, "Bury My Lungs at Red Rock," *The Progressive*, New York, February, 1979, pp. 25-27. Also see McCleod, Christopher, *The Four Corners: A National Sacrifice Area?* Earth Image Films, San Francisco, CA, 1981.

27. "Navajo Uranium Operations: Early Hazards and Recent Interventions," op. cit., pp. 12-13. See also Ford, Bacon and Davis Utah, Inc., Phase II, Title I, *Engineering Assessment of Inactive Uranium Tailings*, Shiprock Site, Shiprock, MN, March, 1977.

28. The measurement accrues from the authors having stepped off the distance. As Tso and Shields note in their 1980 publication ("Navajo Uranium Operations," *op. cit.*), "This tailings site is also within one mile of a day care center, the public

schools...the Shiprock business district and cultivated farmlands." See also *Administrator's Guide for Siting and Operation of Uranium Mining and Milling Facilities*, Stone and Webster Corporation, Denver, CO, 1978 and LaDuke, Winona, "How Much Development?" *Akwesasne Notes*, Mohawk Nation via Rooseveltown, NY, late winter, 1979, p. 5.

29. As Michael Garrity has pointed out ("The U.S. Colonial Empire is as Close as the Nearest Reservation," *op. cit.*, p. 258) the Kerr-McGee position on all this was summed up by corporate spokesman Bill Phillips when he told a Washington, D.C. reporter that, "I couldn't tell you what happened at some small mines on an Indian Reservation. We have uranium interests all over the world." For its part, the U.S. government chose to stonewall the matter as well. Amanda Spake of *Mother Jones* found when inquiring about Shiprock in Atomic Energy Commission circles that only one government official was even prepared to acknowledge that he was aware of the issue, and he denied the *existence* of the mines altogether.

30. As Sorenson points out ("Radiation Issues: Government Decision Making and Uranium Expansion in Northern New Mexico," *op. cit.*), for populations living in close proximity to mill tailings, the risk of lung cancer doubles; among shaft miners the rate is much higher. V. Archer disclosed (in a presentation titled "Uranium Miners: Clinical Considerations") in a 1980 Symposium on uranium conducted in Farmington, NM that, by that year, more than 200 miners had died of lung cancer across the Colorado Plateau as a whole. At the same symposium, L. Gottleib, an Indian Health Service physician, demonstrated that 40% of these miners who had died of the disease were under 40 years of age. See also Samet, J.M., *et al.*, "Uranium Mining and Lung Cancer in Navajo Men," *New England Journal of Medicine*, 310, 1984, pp. 1481-1484.

31. In his 1980 symposium presentation, L. Gottleib indicated that "heart defects" had also become a recent leading contender among terminal illnesses prevailing among miners and those otherwise exposed to mining operations in the Shiprock area. See also, Nafziger, Rich, "Indian Uranium Profits and Perils," Americans for Indian Opportunity, *Red Paper*, Albuquerque, 1976.

32. These figures derive from a number of reports (Schurgin and Hollachi; Brandeis, Victor, Archer, *et al.*; Niosh, etc.). Reasonably definitive studies have been conducted concerning the physical consequences of uranium mining on Indian miners because the indigenous population, unlike the transient mining population, is relatively stable. Given that Indian miners do not tend to pick up and move, following the mines, they are logical subjects for the long-term monitoring necessary for longitudinal study. According to Shields, Laura Mangum and Alan B. Goodman, "Outcome of 13,300 Navajo Births from 1964-1981 in the Shiprock Uranium Mining Area," an unpublished paper presented at the May 25, 1984 American Association of Atomic Scientists symposium in New York, the rate of birth defects among Navajo newborn near Shiprock during the period 1964-74 was 2 to 8 times as high as the national average. Microcephaly occurred at 15 times the normal rate. They also note that male/female birth ratios may have become somewhat unbalanced during this period in areas associated with uranium mining and milling operations. Shields and Goodman indicate that the rate of birth anomalies seems to have diminished substantially after 1975, although it continues to run well above normal. They tentatively

correlate this improvement to four industrially related factors: 1) The covering of a 40-acre, previously exposed tailings pile near Shiprock. 2) The marked decline of uranium mining and milling activities in the area after 1974. 3) Improvement of electrostatic precipitators at the nearby Four Corners Power Plant. 4) Closure of the Shiprock electronics plant which had chronically exposed Navajo women to a range of organic and inorganic chemicals including cobalt-60 and krypton-85. This information corresponds well with that of Ambler, M., who found in a *High Country News* feature (Vol. 12, No. 2, January 25, 1980, pp. 3-5) that the rate of infant birth defects, including a pronounced increase in Mongoloidism, at Grand Junction, CO (where more than 300,000 tons of raw tailings were utilized in construction projects) had tripled since the commencement of uranium mining/milling activities there.

33. Internal Council of Energy Resource Tribes memorandum, staff report to the director (Peter McDonald), February 9, 1980.

34. "Manpower Gap in the Uranium Mines," *Business Week*, November 1, 1977, cited in Garrity, *op. cit.*, pp. 258-259. It should be noted that the domestic uranium market has since gone "bust" due to the termination of the Atomic Energy Commission's ore buying program in 1979. Both "South African" (*i.e.*, Namibian) and Australian uranium ores are also underselling the U.S. variety by a considerable margin, rendering U.S. production largely unprofitable in commercial markets worldwide. The *Business Week* quotation remains nonetheless instructive concerning what will happen when the uranium "boom" resumes (as surely it must, given present U.S. defense policies and other factors).

35. See Schwagin, Anthony S. and Thomas Hollbacher, "Lung Cancer Among Uranium Miners," *The Nuclear Fuel Cycle*, Union of Concerned Scientists, Cambridge, MA, 1973. Also see Shields and Goodman, *op. cit.*, p. 4 and Rankin, Bob, "Congress Debates Cleanup of Uranium Mill Wastes." *Congressional Quarterly*, Washington, D.C., August 19, 1978, p. 2180.

36. Churchill, Ward, "Nuclear Contamination Resultant from Extraction Processes in the Southwestern United States," unpublished paper presented at the 1983 International Indian Treaty Council conference, Okema, OK (finding resultant from interviews). The contamination conclusion is largely borne out in a memorandum/news release of the New Mexico Environmental Improvement Agency dated May 21, 1980 made in conjunction with the area office of the Indian Health Service. In these documents, released upon completion of investigations into the so-called "Churchrock Spill" (of water from a United Nuclear Corporation tailings pond), Indian Health Service director William Mohler observed that downstream animals tested for spill related contamination revealed higher tissue levels of Lead-210 and Polonium-210 (not associated with tailings) than of Thorium-230 and Radium-236 (released in the spill). While this comment was no doubt intended to be reassuring to downstream residents, what it really meant was that animals along the Rio Puerco were *already* heavily contaminated by nuclear wastes – what Dr. Laura M. Shields has termed "chronic environmental exposures" – prior to the so-called "Churchrock disaster" of 1979.

37. In the memoranda/news releases mentioned in the preceding note, the Indian Health Service actually suggested that Churchrock area residents go ahead and eat their

animals – after having delineated the nature and degree of contamination discovered in samples of the same animal tissues – but recommended against consumption (typical among Navajos) of organs such as sheep kidneys and livers as these tissues "tend to concentrate radioactive materials to a greater extent than other parts of the animal." As Christopher McCleod reveals in his "Kerr-McGee's Last Stand" (*Mother Jones*, San Francisco, December, 1980), Churchrock sheep herders were still having difficulty finding commercial or governmental agency buyers for their contaminated animals three years after the spill. In other words, the animals were all right for consumption by Navajos, but not by non-Indians in New York, Tokyo and London.

38. For a full listing of these corporations, see the map accompanying this essay entitled "U.S. Corporate Interest in the Greater Sioux Nation." A glimpse into the implications of this high plains proliferation is offered in the following quotations: "Overall the plans for industrializing the Black Hills are staggering. They include a gigantic energy park featuring more than a score of 10,000 megawatt coal-fired plants, a dozen nuclear reactors, huge coal-slurry pipelines designed to use millions of gallons of water to move crushed coal thousands of miles, and at least 14 major uranium mines" (Wasserman, *op. cit.*); and "Rancher Bud Hollenbach...testified at the Edgemont [South Dakota] TVA Hearing on March 1, 1979 that the production of a flowing well two miles from the (Burdock) mine was cut in half by a two-week pumping test in 1977" (*The Black Hills/Paha Sapa Report*, Vol. 1, No. 1, Rapid City, SD, July 1979, p. 4). Given the extent of the plans mentioned in the first citation, and the impact of the water consumption of a single mine mentioned in the second, the overall effect of actualizing even a small portion of the entire governmental "development" concept within a semi-arid region such as the Black Hills can be readily imagined.

39. Irvin, Amelia, "Energy Development and the Effects of Mining on the Lakota Nation," *Journal of Ethnic Studies*, Vol. 10, No. 1, Spring 1982.

40. Wasserman, Harvey, "The Sioux's Last Fight for the Black Hills," *Rocky Mt. News*, August 24, 1980.

41. *The Black Hills/Paha Sapa Report*, *op.cit.*, p. 4.

42. *Indian Health Service Circular*, Aberdeen (SD) Area Office, Pine Ridge (SD) District, June 1980.

43. Gilbert, Madonna, "Radioactive Water Contamination on the Red Shirt Table, Pine Ridge Reservation, South Dakota," unpublished report to Women of All Red Nations, General Delivery, Porcupine, SD, March, 1980.

44. Women of All Red Nations, "Radiation: Dangerous to Pine Ridge Women," *Akwesasne Notes*, Spring 1980.

45. Irvin, *op. cit.*, p. 99.

46. Messerschmidt, Jim, *The Trial of Leonard Peltier*, South End Press, Boston, 1983, p. 4. The area, located around the Sheep Mountain portion of Pine Ridge, also turned out to be rich in uranium in its own right. See Gries, J.P., *Status of Mineral Resource Information on the Pine Ridge Indian Reservation*, BIA Report No. 12, U.S. Department of Interior, Washington, D.C., 1976. Wilson's gesture bears no validity under the still-binding 1868 Fort Laramie Treaty, the provisions of which stipulate that no Lakota land cession or transfer is legitimate, absent three-quarters express consent from three-quarters of all adult male Lakotas. Wilson did not even pretend to carry such

consent into the negotiations. Both he and the federal government maintained that the Indian Reorganization Act overrode the treaty provisions, enabling him to effect a unilateral land transfer "in behalf of" his people. The U.S. Supreme Court had already determined this to be patently untrue in its opinion concerning the Black Hills Land Claim (423 U.S. 1016 [1975]), not only with regard to reservation areas, but to the whole of the Lakota treaty territory. Congress nonetheless formalized its illegal transfer of the Gunnery Range in 1976, through P.L. 90-468. For further information, see Huber, Jacqueline, *et al.*, *The Gunnery Range Report*, Oglala Sioux Tribe, Office of the President, Pine Ridge, SD, 1981.

47. "Radiation: Dangerous to Pine Ridge Women," *op. cit.*

48. *The Black Hills/Paha Sapa Report*, op. cit., p. 1. Also see Matthiessen, Peter, *Indian Country*, Viking Press, New York, 1984, pp. 203-218.

49. Robert A. Taft Sanitary Engineering Center, *Technical Report W62-12*, published by the U.S. Department of Health, Education and Welfare, U.S. Government Printing Office, Washington, D.C., 1979, p. 31.

50. "Nuclear Waste Facility Proposed Near Edgemont," *Rapid City Journal*, Rapid City, SD, November 19, 1982.

51. It is a standing area "joke" that an Edgemont resident not killed in a car crash or hunting accident will ultimately die of cancer. Typical of recent governmental/corporate assertions that locating a nuclear waste facility there is "completely safe." See "Edgemont Waste Facility No Health Hazard Says Chem-Nuclear Corp.," *Rapid City Journal*, December 10, 1982, p. 5.

52. "Radiation: Dangerous to Pine Ridge Women," *op. cit.* WARN's contention is well corroborated within "mainstream" scientific literature. See, for example Lindrop, Patricia J. and J. Rotblat, "Radiation Pollution in the Environment," *Bulletin of Atomic Scientists*, September, 1981 (especially p. 18). Also see USEPA, *National Revised Primary Drinking Water Regulations*, Federal Register, Vol. 48, October 5, 1983, pp. 45502-45521.

53. "Radiation: Dangerous to Pine Ridge Women," *op. cit.* Again, WARN's speculation/concern is hardly "paranoid," as is borne out in surveying reputable scientific literature on the issue. See, as but two examples, Tamplin, Arthur R., and John W. Gofman, *Population Control Through Nuclear Pollution* (Nelson Hall, Co., Chicago, 1971), and Reynolds, Earl E., "Irradiation and Human Evolution," in *The Process of Ongoing Human Evolution* (Wayne State University Press, Detroit, MI, 1960; particularly p. 92). For a more popular non-Indian view of the same general subject matter, see Ibser, H.W., "The Nuclear Energy Game: Nuclear Roulette," *The Progressive*, January, 1976.

54. Federal Energy Administration, *Project Independence: A Summary*, Office of Strategic Analysis, Washington, D.C., November 1, 1974.

55. Perhaps the best single study of aquifer contamination and depletion is Bowden, Charles, *Killing the Hidden Waters*, University of Texas Press, Houston, 1977. Also of interest is "Comments on Proposed Cleanup Standards for Inactive Uranium Processing Sites," memorandum to the U.S. Environmental Protection Agency from Dr. E.A. Martell, Docket Number A-79-25, June 16, 1980.

56. Article II of the *1948 United Nations Convention on Genocide* defines the following as acts of genocide when directed against specific, identifiable racial, ethnic or

religious groups: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group. Particularly given points b, c, and d, it is clear that the view of WARN's Lorelei Means – that the U.S. version of industrial development in the Black Hills and Four Corners regions constitutes genocide – holds a firm basis in international law. Her perspective has been precisely echoed by organizers such as Laura Kadenehe of the Big Mountain Legal Defense/Offense Committee in Arizona. Use of the term "genocide" in such a context is clearly substantive rather than rhetorical. It is no doubt instructive to note that the United States was one of the very few "civilized nations" to refrain from signing this crucial piece of U.N. legislation for some 40 years. See Brownlie, Ian, *Basic Documents on Human Rights* (Second Edition), Clarendon Press, Oxford University, London, 1981.

57. *The Genocide Machine in Canada, op. cit.*, pp. 183-187. Also see LaDuke, Winona, "James Bay: A Northern Sacrifice Area," *Z Magazine*, Vol. 3, No. 6, June 1990.

58. *One Century Later, op. cit.* Also see Dam the Dams Project and Institute for Natural Progress, "The Water Plot: Hydrological Rape in Northern Canada," in Ward Churchill (ed.), *Critical Issues in Native North America*, IWGIA Document 62, Copenhagen, Denmark, 1989.

59. For a full discussion of the use and implications of the term "auto-genocide," see Chomsky, Noam and Edward S. Herman, *The Political Economy of Human Rights, Vol. II: After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology*, South End Press, Boston, 1979, pp. 135-300.

60. *Worker Safety and Health Working Papers*, Oil, Chemical and Atomic Workers Union, Denver, CO, 1978. It has been compellingly argued by Marcus, Stewart, Najarian and other scientists that current "maximum permissable exposure levels," as adopted by the federal government, are too high by a factor of 10. If they are correct, miners working rotation would be exposed to some 65 times maximum safe limits. Further, *all* miners working under current standards are receiving at least ten times the real maximum. It should thus come as no surprise that uranium miners have all along suffered extraordinary rates of cancer death and birth defects among their offspring. It is instructive that the uranium industry nonetheless insists that current federal standards are set far too *low* to be "practical."

61. *Ibid.* Also see "Economic Data for Nuclear Industry Bargaining Units," *OCAW Position Paper*, Oil, Chemical and Atomic Workers Union, Denver, CO, 1977.

62. There is a theory, popular in EPA circles, that ingestion of uranium particles, via water for instance, presents no real contamination hazard to healthy organisms insofar as uranium ions are too heavy to be absorbed through a normal digestive system. Be that as it may, even the EPA admits that most human organisms – especially among the deeply impoverished populations of Indian reservations – are not "healthy" enough for this principle to apply. Further, the elaboration of this theory posits as given that the most virulent form of uranium contamination occurs by absorption through membrane tissue, such as that found in the lungs and nasal passages: that is to say, by the breathing of radioactive dust. This, clearly, is what is

at issue in the matter of ventilation in mining operations. Of special note here is that children seem especially suseptible to respiratory contamination, requiring much lower exposure levels to be dangerous than do adults.

63. Seib, Gerald F., "Indians Awaken to their Lands' Energy Riches and Seek to Wrest Development from Companies," *Wall Street Journal*, New York, September 20, 1979, p. 40.

64. Owens, Nancy J., "Can Tribes Control Energy Development?" in *Native Americans and Energy Development*, Anthropological Resources Center, Cambridge, MA, 1978, p. 53.

65. *Akwesasne Notes*, Mohawk Nation via Rooseveltown, NY, Late Winter 1979, p. 6; Summer, 1979, p. 31.

66. *Newsletter of the Native American Solidarity Committee*, Berkeley, CA, Spring 1979, pp. 12-13. See also Garrity, *op. cit.*, p. 256.

67. Hoppe, Richard, "A stretch of desert along Route 66 – the Grants Belt – is chief locale for U.S. uranium," *Engineering and Mining Journal*, November 1978, pp. 73-93.

68. Environmental Protection Agency, unpublished field report, number deleted, filed with Southwest Information Resource Center, Albuquerque, dated June 1973.

69. Hoppe, *op. cit.* Also see *NASC Newsletter*, *op. cit.*, and *Akwesasne Notes*, summer 1979, *op. cit.*

70. *Akwesasne Notes*, Late Winter, 1979, *op. cit.*

71. Cable News Network report, July 17, 1990.

72. The conversation in question occurred, in all seriousness, between Ward Churchill and a tenured liberal professor of sociology (who shall remain unnamed) at Sangamon State University, Springfield, IL, during the winter of 1978. Variations on the same theme have since been had with a number of academics from other institutions.

73. One need not delve particularly deeply into the literature to discover this pattern. At a reasonably popular level see Sandoz, Mari, *The Beaver Men*, University of Nebraska Bison Press, Lincoln, p. 195.

74. A simple review of standard anthropological vernacular, laden as it is with terms such as "primitive," "archaic," "precapitalist," etc. in reference to 19th and 20th century indigenous cultures should be adequate to prove this point; such vernacular, and the conceptualizations which accompany it, have at this juncture permeated virtually the full range of conventional social sciences and social philosophies.

75. For an in-depth elaboration of the point made in this paragraph, see Churchill, Ward, "A Critique of Production Relations as Social Base," in *Culture versus Economism: Essays on Marxism in the Multicultural Arena*, Fourth World Center for Study of Indigenous Law and Politics,. University of Colorado at Denver, (Second Edition) 1989.

76. A detailed examination of the dynamics involved here is available in the debate lodged under the title *Marxism and Native Americans*, Ward Churchill (ed.), South End Press, Boston, 1983 (Second Edition, 1989).

77. See Churchill, Ward, "The 'Trial' of Leonard Peltier," preface to Messerschmidt, Jim, *The Trial of Leonard Peltier*, *op. cit.*

78. This argument is made in more depth in the conclusion of *Marxism and Native Americans*, *op. cit.*

79. Johansen, Bruce and Roberto Maestas, *Wasi'chu: The Continuing Indian Wars*, Monthly Review Press, NY, 1979, p. 83. This information is confirmed by Candy Hamilton, an independent researcher associated with the former Wounded Knee Legal Offense/Defense Committee. See also Messerschmidt, *op.cit.*, p. 6.

80. Johansen and Maestas, *op. cit.*, pp. 88-89, document 15 convictions in 562 separate attempts by federal authorities to lock away AIM members in the wake of the 1973 Wounded Knee occupation. Russell Means, to name but one example, was charged with 37 different felonies and 3 misdemeanors resulting in 7 state and 5 federal indictments during the period in question. No federal charge was successfully prosecuted. Only one state charge resulted in a sentence, and that was imposed as a result of Means' alleged conduct during one of the apparently unending series of earlier trials. There can be little clearer illustration of classic COINTELPRO tactics than the example of Pine Ridge/AIM. For a more detailed case study, see Churchill, Ward, and Jim Vander Wall, *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement*, South End Press, Boston, 1988 (Second Printing, Revised, 1990). Also see Matthiessen, Peter, *In the Spirit of Crazy Horse*, Viking Press, New York, 1983 and Wyler, *op. cit.*

81. *Ibid.*

82. Wyler, *op. cit.*, offers a particularly lucid and succinct summary of this trend.

83. See, for example, *Report by the International Indian Treaty Council: Second Session Working Group on Indigenous Populations* (August 8-12, 1983; Geneva, Switzerland), International Indian Treaty Council, 777 United Nations Plaza, New York, for information on the development of these liaisons and alliances.

84. See Tabb, Bill, "Marx versus Marxism," in *Marxism and Native Americans*, *op. cit.*, for a candid assessment of the effectiveness of the Black Hills Alliance effort.

85. *Ibid.*

The Pit River Indian Land Claim Dispute in Northern California

by M. Annette Jaimes

> [W]e are a small tribe of Indians that have never settled with the U.S. Government, and our position is the same now as a hundred years ago. We rejected the Government's offer to settle for 47¢ an acre in 1963. And until we can get a fair settlement for our people and some land returned, we still own our ancestral land. We are not recognized by, nor do we receive any kind of service from the Government. How can we act like beggars to them when they haven't even paid for our land, but claim and use it as their own? We are like squatters on our own land. We are now occupying a small portion of our land that is held and claimed by Pacific Gas & Electric in an effort to force the title question. Yet, without trial or any other presentation of proof of legal title by PG&E in court, the judge ruled in favor of PG&E having valid damage claims against us.
>
> – Marie Lego –
> Pit River Legal Defense Fund
> 1979

For more than twenty-five years, a "controversy" has sporadically swirled around a remote area of California and the relatively obscure group of Native Americans who claim it as their ancestral homeland. Although the actors involved (like the gigantic Pacific Gas and Electric Corporation) are often significant, the sustained struggle occurring within the so-called "Four Corners" portion of the Pit River region has tended to be generally eclipsed by better known Indian/federal/corporate confrontations. The occupation of Alcatraz Island, the takeover of the Mayflower replica, the Trail of Broken Treaties/Bureau of Indian Affairs occupation, American Indian Movement (AIM) altercations with police in Gordon, Nebraska and Custer, South Dakota, the occupation/siege of Wounded Knee, the "Peltier shoot-out," the so-called "AIM leadership trials," the AIM occupation of Yellow Thunder Camp, and the ongoing resistance at Big Mountain, Arizona are all better known examples of indigenous militancy than is Pit River. Still, it remains important for those concerned with contemporary American Indian Affairs to have an overview of the Pit River issues in an accessible form, which covers the perspectives of at least the major factions/interests involved.

Earlier versions of this essay have appeared in *Journal of Ethnic Studies* and *Akwesasne Notes*.

Historical Background

According to A. L. Kroeber,[1] the Achumawi Indians, now known as "the Pit River Group," were a population of perhaps 2,500 to 3,000 during the mid-1800s. They had lived more or less in place within their northern California ancestral homelands since time immemorial, and were divided into some eleven bands, each of which was autonomous. Around 1860 the first (Anglo) settlers arrived and began to take up the choicest agricultural plots within the Pit River area. Shortly thereafter, the Indians were removed by action of the U.S. Army.[2]

Such practices were considered at least theoretically legal by the United States due to a series of eighteen treaties negotiated with the California tribes, beginning in 1851, by a federal commission appointed to this purpose.[3] Although these documents contained language related to Indian land cession (as well as reserved lands), their true standing in law has always been suspect insofar as none was ever ratified by the U.S. Senate (and were thus not consummated as legal instruments within U.S. constitutional definition).[4] Such vehicles of legalized expropriation have elsewhere been quite charitably dubbed as being "little more than real estate conveyances" wrapped in the mantle of international law.[5]

That the treaties were never ratified seems due in large part to opposition presented by the California legislature. Arguing that reservation of *any* land for the Indians' use would be unprecedented and unwise, the majority report of the California senate effectively stalemated the federal ratification effort.[6] It is rumored that state representatives even succeeded in having the treaties hidden in the archives of the Government Room in Washington, D.C., pending resolution of the "difficulties."

In the more expedient estimations of the California state assemblymen, "resolution" entailed payment of something less than $1,000,000 for the virtual entirety of the state.[7] In 1853 the U.S. congress set the stage for the "legal" invasion of Pit River by non-Indians by declaring *all* of California to be public domain, as if the treaties had been ratified rather than a mere (unaccepted) cash offer having been extended. In so doing, it is arguable that the congress violated Section 8, Article 1 of its own constitution.[8]

Meanwhile, efforts at pure extermination, such as the infamous "Round Valley Wars" of northern California,[9] were being directed against the Indians. It has been credibly estimated that there were more than a quarter million indigenous people living in California during the treaty period.[10] By the time of the Enabling Act of 1928, under provisions of which a formal role of California Indians was compiled, it was found that the number had been reduced by more than 90% (approximately 23,000 were recorded upon completion of the role in 1933).[11]

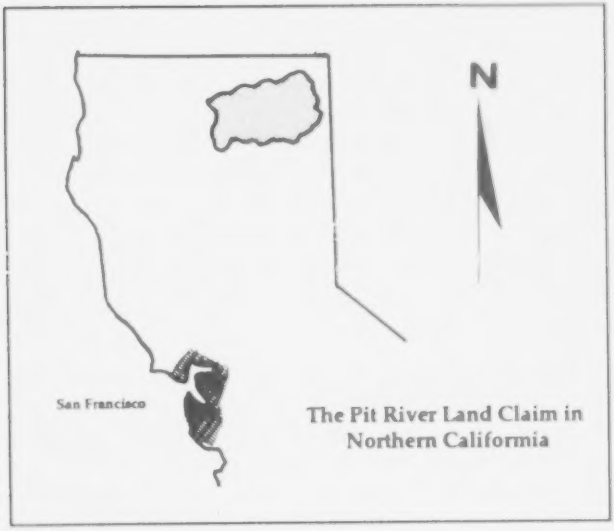
In 1944, after concerted efforts by reformist organizations such as the Commonwealth Club, and in the waning spirit of John Collier's "Indian New Deal," the United States Court of Claims awarded "the Indians of California" a lump $17 million settlement for the reservations they had been promised as a part of treaty negotiations nearly a century earlier. Of this some $12 million was immediately absorbed by "set-offs" for goods and services the government calculated it had already provided the tribes (*after* their basis of subsistence had been utterly eradicated). The remaining $5 million was parceled out in $150 increments to the 36,000 odd Indians whose names appeared on a role compiled during the early 1950s.[12]

This "settlement" award was determined to be so ludicrous that both the California Indians and non-Indian supporting organizations (again spearheaded by the Commonwealth Club) immediately filed suit under provisions of the Indian Claims Commission (established in 1946) for compensation or recovery of the approximately 91 million acres of California not included within the reservation areas. Their view was that, given that the treaties had never been ratified, forced land cessions had never been legal in the first place. Ultimately, in 1963, the commission bore their case out in principle by making an award of an additional $29 million against 64,425,000 acres. This was the amount of land remaining in the whole California land base with reservation lands, Spanish and Mexican land grants and certain other parcels deducted.[13]

A new role of eligible recipients was ordered prepared by the U.S. Department of Interior, and by 1972 its number had reached more than 69,000. Checks in the amount of $700 each were duly sent to each of these,[14] but in the interim a new dynamic had entered into play. Some of the Indians, notably a group concentrated in the "out back" around Pit River were refusing payment (at about 45¢ per acre) and were demanding the return of their land.

Arguing on the basis of the autonomy of the different bands of Achumawi within the tribal whole that at least certain of these bands had *never* agreed to cede or sell land, they demanded the establishment of a formal reservation for their exclusive use within the Four Corners of their traditional homeland; the tract they sought extended across nearly 3.4 million acres.[15]

Actually, there was some precedent for this. In 1875, President Grant set aside several small reservations (typically called "rancherias") for Indians in southern California. These were given full trust patent status by the Act for Relief of Mission Indians in 1895.[16] By 1930, another 36 rancherias had been established under federal auspices in northern California.[17] After the 1934 Indian Reorganization Act had become law, the number of reservations in California burgeoned, reaching 117 by 1950 (of course this counts everything



The Pit River Land Claim in Northern California

from a one acre plot in Strawberry Valley to the 116,000 acre Hoopa Reservation in central California).[18] Clearly, the California legislature's "not one square inch of Indian land" posture was a thing of the past, but, equally clearly, 3.4 million acres in a single reserve was/is another matter.

Nor was the position of the Pit River residents really as new as it must have seemed to many federal functionaries at the time. They had filed a land claims petition before the Indian Claims Commission in 1955. In a concomitant action they had undertaken a formal census to qualify the petition and pass through the trials of liability (backed by ethnologists and anthropologists such as Kroeber, the census yielded a role of 590 members of the Pit River Group). With this in hand, they had been able to secure the final interlocutory order from the claims commission placing them on Docket 347 (July 29, 1959) in Washington, D.C.[19]

The people of Pit River then hired an attorney, a Mr. Louis Phelps of San Francisco, to represent them within the commission process. However, in 1963, Phelps reached a "compromise agreement" proposed by Ramsey Clark (then Assistant U.S. Attorney General, for Land Claims) which was also approved by the Bureau of Indian Affairs (BIA). The nature of the compromise was to effect a monetary settlement and merge the remainder of the Pit River case with the general California Indian Claims Docket (31-37).[20] Such a "solution" was immediately rejected by the Pit River leadership.

Contending that they had not been informed, much less queried as to the acceptability of the proposal entered into in their behalf, the Pit River leaders asserted that they had received inadequate representation from counsel throughout the compromise negotiations. The BIA offered to stage a referendum by which to determine "true tribal sentiment" in the matter, and the Pit River people accepted, promptly delivering a result of 105 No against 75 Yes votes concerning settlement and claims merger.[21]

The Bureau, nonetheless, did not fold its hand with this first-round loss. Securing the agreement of both Phelps and the claims commission, the BIA conducted an absentee ballot resulting in a 24 vote margin in favor of compromise. With that, the Bureau firmly ended the referendum, rejecting a demand by the Pit River opposition (who have always considered that many of the absentee ballots were sent to – and returned by – "non-Pit River Indians") that a repolling take place.[22]

As far as the government was concerned, at least the appearance of justice had been served. For the Pit River opposition, it had all been a hideous charade, another travesty marking the depths of White treachery. Relying again upon their traditional autonomy and the fact of their physical presence upon the disputed land, the opposition vowed to disregard the referendum as being as illegitimate as the 19th century unratified treaties. Their objective was to continue their struggle for a reservation area.

The Federal Posture

The United States entered the 1940s holding the virtual entirety of the area comprising its 48 contiguous states. Of the aboriginal land holdings within the same area in 1600, less than 3% remained under even nominal Indian control. In terms of socio-economic hegemony for the Mother Country, this was all well and good. However, times were changing, ideologically at least. Having consolidated the gains garnered from its continuous wars of conquest in North America, the U.S. had discarded the virulently imperialist Manifest Destiny doctrine marking the Presidency of Theodore Roosevelt, exchanging it for the liberal sophistry of Franklin Delano Roosevelt's neocolonial policies.

The change of national image brought with it a compelling need to, if not exactly redress past wrongs, at least compensate the most evident victims of U.S. territorial expansion. This was all the more true in view of Roosevelt's insistent speechifying on the subject of "nazi thuggery," while the German leader in question (correctly) pointed out that his ethnic and foreign policies derived largely from 19th century U.S. practice *vis-à-vis* the American Indian.[23]

A means had to be expeditiously sought through which the federal government might plausibly "atone" for the "tragedy of historical errors" without ever exactly admitting their full dimension and, especially, without foregoing any of the tangible benefits accruing from resources "mistakenly acquired." The crux of the problem was/is how to insure an arguably legal *post hoc* extinguishment of aboriginal title to territories demonstrably gained through sheer force of arms. This led directly to a rapid escalation in U.S. internal policies providing "compensation" to victims able to show that they or their forerunners had been unjustly deprived of real property.

A (some would say *the*) compensatory method in extinguishing Indian title of land already seized and/or occupied by the federal government is through monetary settlement. This was the purpose of the Indian Claims Commission in its hearing of cases brought by various extant tribal groups in California and elsewhere in the nation.[24] By most accounts, such as that of legal expert Monroe E. Price, the claims commission was quite optimistic that a satisfactory resolution could be achieved concerning the California Indians' near total disenfranchisement.[25] More cynical, and perhaps more accurate, perceptions have noted that, "The expectation was apparently that the Indians in California would be grateful for *any* kind of compensation, given the nature of what they'd been subjected to over the past century."[26]

The main problem confronted by the commission in dealing with California seems to have been the sheer proliferation of groups and claims involved. In the first instance, the very real time requirements of examining several hundred potential dockets to determine whether the nature of each given claim was appropriate for hearing could be projected as staggering. Similarly, the matter of who were the appropriate claimants to receive given compensatory awards promised to be equally complex, *especially* in a context such as that of California, where entire peoples had been effectively obliterated and crucial records had been intentionally "lost" or destroyed.

And again, while the costs associated with simply sifting through the debris wrought among indigenous people by the U.S. settlement of California promised to begin an endless spiral, a second tremendous financial consideration began to loom. With a myriad of claims, many of which promised to ultimately prove valid (and thus subject to the "fair and honorable dealing" called for in the commission's charter) on the horizon, the question of how to devise a formula of "just settlement" in each case became a serious one. On the one hand, a truly equitable monetary compensation of each separate but legitimate claim offered the spectre of proving to be astronomically expensive. On the other hand, undertaking a pattern of extending obviously frivolous awards while keeping costs down threatened the possibility of undoing all the worthy public relations work

the commission was created to accommodate. It was the proverbial "sticky situation."

While groping for a way out of this maze, the commission stalled admirably. Examining the fine details of a number of claims while hearing none of them, the commissioners managed to put off both resolution and awards for nearly two *decades*, until an at least superficially plausible strategy had been formulated. A particular California settlement, *Thompson v. United States* (13 Ind. Cl. Comm'n 369, 1964), is instructive as to the method:

> To facilitate the process of determining liability, a single plaintiff, the Indians of California, was substituted for the multitude of bands, tribelets and other...groups. Counsel for all groups agreed on a settlement of $29.1 million which would be final payment for almost all claims arising before 1946. The Attorney General accepted the settlement subject to the approval of the Indian groups involved.[27]

$29.1 million, of course, is a considerable sum of money, readily salable to the general public as a fair settlement (especially in relation to the Indians' typical and easily observable impoverishment). However, as we have seen, its breakdown on *per capita* and price per acre bases represents a mere pittance, infinitely less costly than either settlement on a case by case basis or return of expropriated land.

By and large, the California Indians were prepared to accept settlement in any form as being better than nothing at all. Still, it has been noted that, "There was dissension, and the major group opposing the settlement was a portion of the Pit River Tribe in Northern California."[28] This, to be sure, went to the already discussed nature of the Attorney General's "acceptance" of his own proposal and the methods employed to attain the Indian "approval" so blandly noted in legalistic descriptions of the flow of events.

Also omitted from consideration is the fact that approval both of the pooling of a vast number of California claims and of the terms of settlement ultimately offered resulted in no small part from conditions of extreme duress created – whether internationally or not – by the conduct of the claims commission itself. Well aware of the truth contained in the axiom, "justice delayed is justice denied," the 20 year delay imposed by the commission in bringing even one California case to court caused an untold anxiety among many Indians, and a concomitant willingness to agree to anything which would bring matters to a head. In any event, the Indians were assured that delay was not working against the government; it, after all, was in control not only of the process, but of the land as well.

It is not that the federal apparatus was unwitting or unaware of the implications of its course of conduct. As even Senator Karl E. Mundt was

Clearcutting of timber in Pit River territory, Mt. Shasta in the background. It was precisely this same issue which led to the "G-O Road" dispute in the late 1980s. (*Photo: Gloria L., Pit River Tribal Council*)

prepared to explain the outcome of the California claims commission settlement, "The Indians went in empty-handed and came out stripped of their blankets."[29] The same cannot be said, of course, of the growers, industrialists and merchants who had moved in to occupy the land of California's Indians. Specifically, the same cannot be said of the major timbering interests, the mineral exploration concerns and the gigantic Pacific Gas and Electric utility corporation which had moved into the Pit River region.

Response from Pit River

In 1965, the year after *Thompson v. United States* and the Pit River opposition's announcement that no settlement checks would be accepted, the people began a long series of legal and extralegal maneuvers intended to assert their right to the Pit River country. Led by Willard Rhoades and Raymond Lego, they put together a fund of $1500 and replaced their attorney of record, Louis Phelps, with the celebrated San Francisco attorney Melvin

Belli. Filing suit to force severance of the Pit River opposition's (calculated as comprising five of the eleven Achumawi bands) claim from the blanket settlement, Belli brought his case to court, only to be forced from the bar by the BIA which contended that it had not approved him as counsel for the Pit River Tribes and that he therefore "could not represent these Indians." Infuriated, Belli appealed all the way to the U.S. Supreme Court, to have his case dismissed in 1969 due to the "inherent trust responsibility" exercised by the Bureau.[30]

Undaunted, Rhoades and Lego turned their attention to the U.S. Forest Service, whose "timber leasing" (read: timber sales) practices were deemed to be both destroying Pit River resources and, because of heavy logging truck traffic traversing the area's unimproved roads, endangering Indian lives. Attempting to collect tolls on logging trucks moving to and from Shasta National Forest, the people were blocked by the Forest Service. Again filing suit (with a section demanding that the Forest Service show title to the land), they forced a compromise whereby the government paved all roads to be used by logging vehicles, thus simultaneously enhancing resident safety and limiting timber access routes.[31]

For an extended period thereafter a sort of hiatus prevailed, with the government contending that the matter was resolved, and the Pit River opposition doggedly watching the Belli appeal wind its way through the courts. Then came the 1969 Supreme Court dismissal and a proviso that the "Legitimate Pit River Nation," as the opposition now termed itself, had no alternative but to accept settlement checks at a *per capita* rate of $656.[32] A series of emergency meetings were held in Lego's home to decide what action to take in confronting this new circumstance.

In June 1970 it was determined to undertake the physical occupation of a symbolic tract of land in order to dramatize the situation at Pit River (this was in the wake of the Indians of All Tribes' occupation of Alcatraz Island). Led again by Rhoades and Lego, about a hundred Indians (apparently Wintu as well as Achumawi) moved to take their first choice, an approximately 800 acre plot of Lassen National Forest. Word of what was intended had, however, leaked and the party was met at the forest boundary by a large force of riot-equipped local police, sheriff's deputies and federal marshals, the leader of which announced over a bullhorn: "The park is closed, and I close it under the authority given to me by Congress!"[33]

Not seeking a pitched battle, Rhoades and Lego led their "troops" to their second target of opportunity, the Pacific Gas and Electric Corporation's camp at the Big Bend of Pit River (a small portion of the 52,000 odd acres "owned" by PG&E in the area). Here, Lego read a proclamation he'd especially prepared for the occasion:

Raymond Lego addresses crowd prior to occupation of land claimed by PG&E. ***(Photo: Gloria L., Pit River Tribal Council)***

> Don't feel you're a stranger here.
> This is your land. This is my land.
> This is Indian country.
> My ancestors lived here.
> The Great Spirit planted them here.
> Just like he did the oak trees and the water.
> Feel welcome. Let your spirit be free.[34]

Promptly the next morning, a task force of eighty-six sheriff's deputies arrived to "restore order." Lego informed them that they were on Indian land and, unless they could produce a deed to the property, they should leave. Along with thirty-five other members of the occupation group, he was then arrested for trespass and taken to jail.[35]

At the arraignment the following afternoon, lawyers representing the 36 defendants made motions to dismiss charges against their clients, to acquit them on the basis of false arrest, to establish the unconstitutionality of the intended prosecution and a motion to prosecute Pacific Gas and Electric for

wrongful occupancy of the land in question. The motions were each either taken under consideration by the court or denied out of hand, the defendants posted bond, and immediately returned to the PG&E camp, reoccupying it that evening.[36]

The next morning brought a replay, with 18 Indians arrested. After arraignment, they moved into the original target area in Lassen National Forest, were joined by Indians of All Tribes leader Richard Oakes and a contingent of his Alcatraz occupation group, and twenty-two more (including both Rhoades and Lego) were arrested for "starting a fire without a permit." By this point, bail monies were becoming a serious problem and Native American recording artist Buffy Sainte-Marie provided timely cash assistance.[37]

The necessity of significant numbers of people having to make a hundred mile daily commute to stand trial was also looming as a major logistical problem. Hence, it was decided at a Legitimate Pit River Nation community meeting in October, 1970, (also attended by Oakes and his delegation) to occupy another parcel of land located much closer to the trial site in Burney, CA. This one was another PG&E property, and located within the Four Corners area itself. It precipitated what came to be known as "The Battle of Four Corners."[38]

By the second day of the occupation, a large sign had been posted at the entrance to the property proclaiming the area as being a portion of the Legitimate Pit River Nation, a community kitchen had been established and a dormitory quonset hut (provided, unwittingly, by the federal government) was being erected.[39] On October 27, the roughly 150 person Indian occupation group was attacked by a group of perhaps 400 heavily armed police, sheriff's deputies, federal marshals and U.S. Forest Service personnel who were plainly spoiling for a fight and affronted at the Indians' persistence.[40]

As there were women, children and elders within the camp, both the Pit River men and Oakes' Alcatraz group set about defending themselves as best they could with tree limbs and 2x4s (no guns). They were, of course, beaten up and hauled away to jail on charges ranging from simple trespassing to assaulting an officer.[41]

Things moved better on the legal front, however. On June 14, 1971, 29 defendants accused in the Big Bend occupations were acquitted in California State Court. Five more (including Lego) were convicted, but of only simple trespass (more serious charges having been dropped), and were given probationary sentences. Of 108 charges filed relative to Big Bend, only 14 resulted in convictions of any sort, and none in jail terms. On March 30, 1972 this was followed by the acquittal on all counts of the five men accused of assaulting federal marshals at The Battle of Four Corners; all charges against

Sign posted by the Legitimate Pit River Nation welcoming Indians of All Tribes activists, *circa* 1971. (Photo: Gloria L., Pit River Tribal Council)

the remaining defendants were dismissed.[42] As one juror put it afterwards, "What struck me was that the government simply had no case...they just wanted these people put away."[43]

Meanwhile, on February 14, Lego led an occupation group back into Four Corners location and established a semi-permanent camp there. This time there was no opposition from law enforcement personnel, and the trial victories from the Four Corners cases were celebrated there. This was coupled to the sustained occupation headed by Rhoades (and begun in July, 1971) of a 900 acre tract of PG&E property near Big Bend. The corporation, which used the land only as collateral on bank loans, made no attempt to force physical eviction, although it did enter a civil action to enjoin the Pit River leadership from effecting further occupations.[44]

The new "leniency" exhibited by both the government and corporate interests relative to Pit River occupations was no doubt linked to their singular lack of success in criminal court. However, the overriding reason for their sudden wariness in pushing matters was more probably associated with a battery of legal actions undertaken by the Pit River people to bring the issue of land title squarely into civil court. Yet another attempt to reopen the settlement was dismissed by the Supreme Court in 1971,[45] but it was followed immediately by a suit seeking return of all PG&E held land. A petition was also filed with the Federal Power Commission requesting that agency to refuse renewal of the corporation's dam operation licenses until such time as PG&E demonstrated legal title to the land on which the dams were built.[46]

Further, on October 26, 1971 the Pit River Tribal Council filed a suit for

$4 million in damages with both the Shasta County (CA) and federal courts resultant from the Battle of Four Corners.[47] With both the government and the corporations evidently on the defensive, Raymond Lego led yet another occupation, this time of a Kimberly Clark Corporation holding near his home at Montgomery Creek. Again, there was no attempt at forced eviction.[48] As Lego and Rhoades (and Chief Charles Buckskin) defined it at the time, the Legitimate Pit River Nation was proceeding on the following premises:

1) Ancestral tribal lands have been occupied and in use by tribal people since time immemorial. This original right cannot be abrogated by any illegal seizure.

2) The question of 18 unratified treaties that were not passed by Congress (must be addressed directly in terms of their ability to convey "legal title").

3) All other laws and statutes pertaining to tribal lands. For example:

   a. U.S. Constitution (Art. 1, Sec. 8), "The Congress shall have the power to...regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

   b. Title 25 (U.S.) code 194 (Trial of Property; Burden of Proof), "In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous ownership."[49]

Given the rather obvious legal basis for many of the Pit River people's contentions, and faced with a veritable barrage of court actions, the government tried another – and perhaps last ditch – tack. Spreading the word that the cashing of checks associated with the California Indian Claims settlement would have no effect on other litigation efforts, the BIA finally got a substantial number of Pit River people to accept their per capita payment regarding the California merged settlement. The government then posited that the cashing of such checks constitute approval of the contested claims merger.[50]

Before the opposition could effectively respond to this latest federal maneuver, the Department of Labor entered the fray with an offer to transfer the abandoned Toyon Job Corps site (earlier occupied by a group of Wintus) to clear Pit River title and control. This was done on May 26, 1973.51 With that, Tribal Council Chairman Micky Gimmill – admittedly weary of the extended conflict – announced that he felt the Pit River demands had been satisfied,

thereby splitting the opposition itself into "Council Backers" and "Hold Outs" (led, as always, by Lego and Rhoades.)[52]

By 1975, the Hold Out faction numbered only about 100, and the single remaining occupation site was the Kimberly Clark location at Montgomery Creek (near Big Bend). However, in 1979, the group retained experienced Indian rights attorneys Abby Abinanti (Yurok) and Amos Tripp (Karuk) and Lego led yet another occupation of a 900 acre PG&E tract near Big Bend. At the time of his death on June 13, 1980, he was still refusing to honor a court ordered evacuation of the property, or to acknowledge corporate offers of compromise.[53]

As his wife, Marie, put it in mid-1983, "...why is there such a document such as the Constitution of the U.S.? and why should the U.S. try to offer to settle? and why would the U.S. have to use all means of crookedness and fraud to dispossess us of our land?..No corporation holding ancestral land has shown in court that land has been legally acquired from the Indian people...So this is the way it is today, we have no lawyer, no legal defense of any kind, and no means to hope that we might have, but we'll still try to get some measure of justice for our people, whether it be a hundred years or a thousand"[54] Clearly, the struggle goes on.

Conclusion

The Pit River struggle holds an importance far beyond the level of immediate acclaim and attention it received. In a number of ways, it may rightly be viewed as a seminal course of action, the first of its kind undertaken by a given tribal group in this century (as opposed to Alcatraz, which was decidedly the result of a "Pan-Indian" effort). In conclusion, we would like to briefly review what might be viewed as several primary areas of import.

First, the stand taken by the Legitimate Pit River Nation would seem to have had a galvanizing effect upon many northern California Indians who, as a generalized group, seem to have been strikingly demoralized and desolate by the 1960s. Unlike Alcatraz, which sparked a good deal of pride among the younger members of the same community in being generically Indian, Pit River instilled a sense of the worthiness of being a *California* Indian. This, in turn, may be said to have yielded a not insignificant impetus to the reemergence of certain identifiable indigenous communities in northern California during the second half of the 1970s.[55]

Second, the focus of the Pit River struggle, while concentrated largely on the various levels of non-Indian government (local, state and federal), opened up a substantive degree of direct action against *corporate* targets for the first time. After a considerable lag, such analysis and lines of activity were

adopted by Native American activists virtually across the board, and may now be termed as salient among coalition efforts such as the Black Hills Alliance, Big Mountain Support Group and, to a certain extent, AIM.[56]

Third, the method of occupying locations directly associated with given tribal historical interests and/or treaty rights (as opposed to symbolic targets such as Alcatraz, the Mayflower or the Bureau of Indian Affairs building) was pioneering. Again, after a considerable lag, such an approach was broadly adopted by Indian activists, being most notably pursued at the Point Conception (CA) take-over of PG&E property in 1978, the Dakota AIM (ongoing) occupation of 880 acres of Black National Forest land/establishment of Yellow Thunder Camp in 1981, and the ongoing resistance to forced relocation being practiced by traditional Navajos in the Big Mountain area of Arizona.[57]

Fourth, the tactics employed by the Pit River people eventually refocused Indian activist intellectual attention towards theories of extralegality, not in terms of civil disobedience in the sense that it is conventionally understood, but as a means of employing the American juridical tradition in its own terms (*e.g.*, illegality ultimately rationalized by law).[58] Such a novel articulation of U.S. legal theory and practice – from the typical academic viewpoint, at least – has tended to stand Native Americans in rather good stead within the international fora approached by groups such as the International Indian Treaty Council, Indian Law Resource Center and World Council of Indigenous Peoples.[59]

Fifth, the level of sustained resistance offered by the Legitimate Pit River Nation informed an entire generation of American Indian activists that the nature of indigenist or anti-colonialist struggle in this hemisphere can be and must be long-term and "on the land." This is as opposed to an early AIM tendency (*circa* 1968-1972) to pattern its activities after the short-term, urban based model of many "new left" groupings.[60]

Sixth, the refusal of the Pit River People to simply roll over in the face of adversity and pat legalistic answers to their demands has given call for even many "mainstream" legal scholars to rethink the issues raised by the case. Hence, the following observation now appears in a standard legal text in reference to the California claims Settlement:

> The proposed settlement is based upon an unjust and unrealistic evaluation of the lands they formerly occupied and does not take into account the four factors so necessary in a case of this kind...namely:
>
> a. what the Indians of California owned,
> b. what was taken from them by the [U.S.],
> c. what was given back to them...in reservations and allotments and benefits,

d. what the [U.S.] should now give [them] in the form of a money judgement which would restore to them what they should have received but which was denied them up to this time, and lastly the high revenues now being received by the State of California from land granted to [it] by the [U.S.] and from lands still owned by the [U.S.] in the state...from oil, gas, potash, and other minerals and timber in the National Forest.[61]

Finally, however, the most significant contribution made by the indigenous people of the Legitimate Pit River Nation may have been one of the spirit of fierce determination perhaps best expressed by Marie Lego in 1979. "America," she wrote, "cannot show me the terms of my surrender." This is readily evidenced in the attitude evidenced by her successors among her own people who are presently pursuing their land struggle through what has come to be called the "G-O Road Case" (see Glenn Morris essay on this topic in Volume 1). In a very real sense, then, the Pit River Land Claim has never been resolved. It thus remains a critical issue in Native North America.

Notes

1. Kroeber, A. L., *California Indians IV*, Garland Publishing Co., New York, 1974.

2. Rawls, James J., *Indians of California: The Changing Image*, University of Oklahoma Press, Norman, 1984, pp. 141-148.

3. *Ibid.*, p. 142.

4. Price, Monroe E., *Law and the American Indian: Readings, Notes and Cases*, Bobbs-Merrill Publishers, New York, 1973, pp. 1-4.

5. Blue, Brantley, "Foreword," in Charles J. Kappler, *Indian Treaties, 1778-1883*, Interland Publishing Co., 1972, unnumbered.

6. California Legislature, *Journal of the Senate*, 3rd Session, Sacramento, 1852, p. 597.

7. California Legislature, *State Assembly Journal*, 2nd Session, Sacramento, 1853, 2nd clause, p. 3.

8. Churchill, Ward, "The International Implications of Treaties Between the United States and Various American Indian Nations," *Akwesasne Notes*, Mohawk Nation via Rooseveltown, New York, February, 1984.

9. Carranco, Lynwood and Estle Beard, *Genocide and Vendetta: The Round Valley Wars of Northern California*, University of Oklahoma Press, Norman, 1981.

10. Thornton, Russell, *American Indian Holocaust and Survival: A Population History Since 1492*, University of Oklahoma Press, Norman, 1987, for a general overview of indigenous demography free from ideological dilution.

11. See, Kroeber, *op. cit.*: of these approximately 4,000 were recorded as being "full-bloods" while the remaining 19,000 were "mixed-bloods" of varying degrees of "quantum" down to one-eighth.

12. Johnson, Kenneth M., *K-344: Or, the Indians of California vs. the United States*, Dawson's Book Shop, San Francisco, 1966. See also Forbes, Jack, *Native Americans of*

California and Nevada, Naturegraph Publishers, 1969, pp. 104-106. The author, an enrolled Juaneño (southern California Mission Band), also has direct experience with this bit of governmental sleight-of-hand. When her check arrived, she cashed it, totally unaware that this act was construed as not only her "aye" vote with regard to the California land settlement, but her agreement to the idea that the Juaneño would be henceforth considered an "extinct" people. Such bureaucratic genocide is not uncommon in the contemporary United States.

13. Stewart, Omar C., "Litigation and Its Effects" in Robert F. Heizer (ed.), *Handbook of North American Indians, California*, Smithsonian Institution, Washington, D.C., 1978, p. 708.

14. Cook, Sherberne F., *The Population of California Indians, 1779-1970*, University of California Press, 1976, p. 72.

15. Blue Cloud, Peter (ed.), *Alcatraz Is Not An Island*, Wingbow Press, 1972, p. 89.

16. Cook, *op. cit.*, pp. 61 ff.

17. Castillo, Edward D., "The Impact of Euro-American Exploration and Settlement," in Heizer, *op. cit.*

18. Tyler, S. Lyman, *A History of Indian Policy*, Washington, D.C., 1973, pp. 95-149.

19. Lego, Marie, *The Legitimate Pit River Nation*, Legal Defense Fund and Tribal Council, P.O. Box 52, Montgomery Creek, CA, Nov. 9, 1977, p. 4.

20. Anonymous, *The Legitimate Pit River Tribe*, Dec. 12, 1979, p. 2.

21. Lego, *op. cit.*

22. *Ibid.*

23. Cook, Bernard, "Hitler's Extermination Policy and the American Indian," *The Indian Historian*, Summer, 1973, 48-49. Also see, *Hitler's Table Talk, 1941-1944*, London, 1953.

24. In fact, the charter document of the Indian Claims Commission *precluded* restoration of land to Indian claimants as a compensatory measure. In large part, this was explained that this was necessary insofar as land restoration would inherently result in the involuntary relocation of non-Indians who had moved – in good faith – into the contested areas. This, it was asserted, would impose an unfair burden upon contemporary citizens for the sins of their ancestors. While this is, of course, a plausible rationale, it is interesting to contrast it to current federal policy (under provisions of P.L. 95-531) in undertaking to forcibly relocate approximately 14,000 Navajo *Indians* as a means of providing a just settlement to the Hopi Tribe (*i.e.*, restoration of land). The double standard and cynicism of federal rationalizations of compensatory methods thus becomes quite clear.

25. Price, *op. cit.*, p. 489.

26. Statement by AIM leader Dennis Banks at D-Q University, Sacramento, CA, September 25, 1982.

27. Price, *op. cit.*, p. 490.

28. *Ibid.*

29. *Ibid.*, p. 494.

30. Matthiessen, Peter, *Indian Country*, Viking Press, New York, 1984, p. 250.

31. *Ibid.*, p. 251.

32. *Ibid.*, p. 254.

33. Blue Cloud, *op. cit.*, p. 90.

34. Lego, Raymond. "Proclamation," *Legitimate Pit River Nation Circular*, P.O. Box 52, Montgomery Creek, CA, June 14, 1970.

35. Blue Cloud, *op. cit.*, p. 91.

36. *Ibid.*, pp. 91-92.

37. Matthiessen, *op. cit.*, p. 252.

38. Blue Cloud, *op. cit.*, p. 93.

39. *Ibid.*

40. Matthiessen, *op. cit.*, p. 253.

41. Blue Cloud, *op. cit.*, p. 93.

42. *Ibid.*, p. 94.

43. Matthiessen, *op. cit.*, p. 254.

44. *Ibid.*, p. 255.

45. *Ibid.*, p. 254.

46. Blue Cloud, *op. cit.*, p. 95.

47. *Ibid.*

48. Matthiessen, *op. cit.*, p. 254.

49. Lego, Raymond and Willard Rhoades, *The Legitimate Pit River Nation*, P.O. Box 52, Montgomery Creek, CA, n.d., p. 4.

50. Matthiessen, *op. cit.*, p. 254.

51. Blue Cloud, *op. cit.*, pp. 95-96.

52. Matthiessen, *op. cit.*, p. 254.

53. *Ibid.*, pp. 255-256.

54. *Ibid.*, pp. 256-257.

55. Rawls, *op. cit.*, pp. 210-217.

56. Matthiessen, Peter, *In the Spirit of Crazy Horse*, (Viking Press, 1983) provides a comprehensive treatment of these points. Also see Bruce Johanssen and Roberto Maestas, *Wasi'chu: The Continuing Indian Wars*, Monthly Review Press, 1979.

57. See Weyler, Rex, *Blood of the Land: The Government and Corporate War Against the American Indian Movement*, Everest House Publishers, New York, 1982, for an excellevt overview.

58. Churchill, Ward, "The Extralegal Implications of Yellow Thunder *Tiospaye*: Misadventure or Watershed Action?" *Policy Perspectives*, Vol. 2, No. 2, Rutgers University (Spring 1982), 332-334. A succinct articulation of this emerging doctrine.

59. International Indian Treaty Council, *Report on the Second Session Working Group on Indigenous Populations*, 777 UN Plaza, New York, 1983. This point demonstrated to good effect.

60. Dunbar Ortiz, Roxanne, "Land and Nationhood: The American Indian Struggle for Self-Determination and Survival," *Socialist Review*, Vol. 12, Nos. 3-4, Oakland, CA, May-August, 1982, offers an interesting portrait of this transitional dynamic.

61. Price, *op. cit.*, p. 491.

The Battle for Newe Sogobia

The Western Shoshone Land Rights Struggle

by Glenn T. Morris

From time immemorial the Western Shoshone people have woven their lives in a symbiotic relationship with the Earth. In the Western Shoshone language, this symbiosis is called Newe Sogobia (Newe being the Shoshone name for themselves and Sogobia meaning Mother Earth). If subjected to a westernized translation, Newe Sogobia would be the one-dimensional and disembodied description of the Western Shoshone national territory. In the Western Shoshone tradition, however, the words reflect the interconnectedness of the land, water, sky, animals and plants and the Western Shoshone as a nation.[1]

For millennia, the various branches of the Shoshone people flourished in an area of hundreds of square miles, stretching from Montana in the north to what is now Death Valley, California in the south. Although the colonial Spanish made some incursions into Shoshone territory, it was not until encroachment by the United States, fueled in large part by the annexation of the California territory in the mid-19th century, that Shoshone, and particularly Western Shoshone, society experienced dramatic pressures.

In the onslaught to acquire new riches, both individually and nationally, Europeans from the United States began to flood across Shoshone Territory. When the Shoshone objected or resisted the incursions, they were often killed or politically neutralized. The fish and game of the region was severely depleted by the newcomers. Similarly, the piñon forests, central to Shoshone culture and diet, were destroyed in wholesale fashion to make way for mines, railroads, and U.S. military installations. Consequently, the Western Shoshone understandably began to resist the invasion and warfare in the region became commonplace.

The Treaty of Ruby Valley and the Attack on Shoshone Sovereignty

By 1863, the United States was interested in negotiating peace treaties with the various segments of the Shoshone nation. Eventually, treaties were signed with the Eastern Shoshone in Wyoming, the Northwest Shoshone in Idaho, the Shoshone-Bannock also in Idaho, the Goshute Shoshone in Utah, and, finally, the Western Shoshone in Nevada with the Treaty of Ruby Valley.[2] In each of these cases, the United States was eager to finalize the agreements because it was ensnarled in the Civil War, and the U.S. desper-

ately needed the gold available from California to finance the war. Additionally, some fear existed that the Shoshone, and the newly arrived Mormons in Utah, might ally themselves with the Confederacy in the Civil War in an effort to strangle the California gold supply to Washington, D.C.[3]

With the Treaty of Ruby Valley, the Western Shoshone agreed to the following provisions: that war between the Western Shoshone and the United States should cease; that in return for certain payments by the United States, the Western Shoshone would grant licenses to the United States for military posts, travel routes, mining, timber, and farming operations and settlements for the operations; the U.S. also agreed to pay $100,000 for the destruction of the animal life of the region that the invaders had caused. What is more important about the treaty is what it *did not* provide. Treaty analyst Rudolph C. Ryser explains:

> Nothing in the Treaty of Ruby Valley ever sold, traded or gave any part of the Newe Country to the United States of America. Nothing in this treaty said that the United States could establish counties or smaller states within Newe Country. Nothing in this treaty said that the United States could establish settlements of U.S. citizens who would be engaged in any activity other than mining, agriculture, milling and ranching. Yet, the United States has established political jurisdictions in the form of counties, cities and the states of Nevada, Idaho, Utah and California that overlap into Newe Country. The United States of America did establish settlements of its citizens within Newe Country for purposes other than those stipulated in the Treaty.[4]

Under the provisions of the treaty, the 24.3 million acres of land comprising the territory of the Western Shoshone nation were defined.[5] By this article of the treaty, the United States recognized the aboriginal title of the Western Shoshone to their homeland, and the Western Shoshone felt secure in the belief that their continued use and occupancy of their lands would be undisturbed. Under U.S. law, aboriginal title may be extinguished only by the express, unambiguous and deliberate intent of congress.[6] Congress has never acted to extinguish Western Shoshone title to their lands. What, then, is the controversy? Virtually immediately after the signing of the Treaty of Ruby Valley, the United States allowed its citizens and agents to invade Western Shoshone lands in violation of the treaty. In come cases, the Western Shoshones were forcibly removed from their lands at gunpoint, and relocated to reservations.[7] Despite this traumatic chain of events, the Western Shoshone title to their territories was never extinguished.

With the passage of the Indian Reorganization Act (IRA) of 1934, the traditional government of the Western Shoshone was thrown into turmoil. According to Glenn Holley, a Western Shoshone leader, "The Bureau of

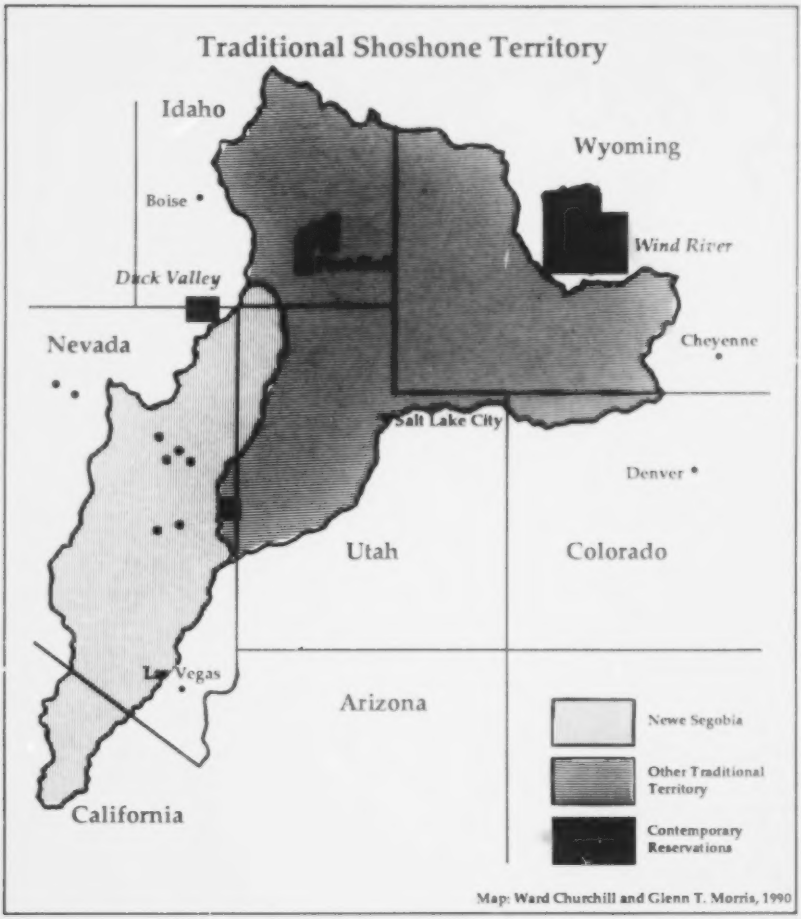
Indian Affairs selected five individuals to act on behalf of the Western Shoshone. The traditional chiefs were asked to support the [IRA] constitution and bylaws of this new government...the traditionals would have nothing to do with the IRA government set up by the United States."[8] As with many other indigenous nations in the United States, the operation of the IRA served to divide the Western Shoshone into at least two camps - those who followed and respected the traditional political leadership and organization of the nation, and those who, for a variety of reasons, chose to embrace the U.S.-imposed IRA system of governance. These differing perspectives on Shoshone sovereignty would become extremely important when the United States attempted to argue that the Western Shoshone had lost all rights to their lands.

The Indian Claims Commission and Newe Sogobia

The Indian Claims Commission (ICC) was established by congress in 1946 to hear and resolve claims arising from the United States' taking of indigenous nations' territories.[9] In 1855, the United States created the Court of Claims in which claims against the U.S. could be lodged. Normally, the government is immune from suit under the principal of sovereign immunity, and can only be sued if it gives its permission. In the case of the creation of the Court of Claims, the U.S. agreed to allow suits against itself *except* in treaty-based claims by Indian nations. Consequently, the only way that Indian nations could sue the federal government for treaty violations prior to 1946 was through specific legislation passed by congress waiving federal immunity.

Although some analysts of the commission viewed its creation as a victory for Indian claimants, closer analysis revealed serious flaws. For example, the federal law creating the ICC did not specifically preclude the return of lands illegally taken from Indian nations by the United States; nonetheless, the ICC commissioners and the federal courts immediately interpreted the act to allow only monetary compensation for Indian lands lost. The explanation for this interpretation becomes clearer when one understands the parties responsible for the creation of the ICC and its first commissioners.

The statute creating the ICC was drafted by members of the law firm of Wilkinson, Cragun and Barker, which would become notorious for representing Indian claims in the ICC even over the objection of the supposed Indian beneficiaries in the case.[10] In fact, at the time that the ICC was created, a senior partner in the firm, Ernest Wilkinson, was theoretically representing the interests of the Temoak Band of Western Shoshone.[11] The ICC Act allowed



attorneys and their firms to receive as much as 10% of any award approved by the commission. Consequently, the firms involved in such claims were not interested in the return of land to Indian nations, but rather in the expeditious award of monetary damages that allowed the awarding of attorney's fees in the case, often millions of dollars.[12]

The Western Shoshone entanglement with the ICC began at the instigation of the above mentioned Ernest Wilkinson. In 1947, the Bureau of Indian Affairs (BIA) approved a claims attorney contract between the Temoak Band

of Western Shoshone and Wilkinson.[13] Wilkinson was contracted to pursue claims by the Temoak charging that the Treaty of Ruby Valley had been repeatedly and egregiously violated by the United States. The Temoak Band consistently asserted their belief that Wilkinson was pursuing claims for the return of their land, and not money damages.[14] In 1951, Wilkinson filed a petition with the ICC asserting that the claim filed by the Temoaks was on the behalf of entire Western Shoshone Nation, and not only one band.[15] The ICC ultimately named the Temoak Band as the sole representative of the entire "Western Shoshone Identifiable Group," despite objections from the vast majority of other Western Shoshone. Ultimately, even the Temoak Band attempted to fire attorney Wilkinson in 1976, but the BIA continued to renew his contract every two years through 1980.[16]

The ICC was established to compensate Indian nations for their title that had been extinguished, and lands and resources taken by the express actions of the U.S. Valuation of the amount of compensation due to the Indians was determined from the date of the express action by the U.S. in the taking. In the instance of the Western Shoshone, their aboriginal title had never been extinguished, but that did not deter the ICC. In 1962, the commission conceded that it "was unable to discover any formal extinguishment" of Western Shoshone title for lands in Nevada, and could not establish a date of taking, but ruled that the lands were taken at some point in the past.[17] It did rule that approximately two million acres of Newe land in California had been taken on March 3, 1853, but without documenting what specific act of congress extinguished the title.[18] Without the consent of the Western Shoshone Nation, on February 11, 1966, Wilkinson and the U.S. lawyers arbitrarily stipulated that the date of valuation for U.S. extinguishment of Western Shoshone title to over 22 million acres of land in Nevada occurred on July 1, 1872.[19] This lawyer's agreement, without the consent or knowledge of the Shoshone people, served as the ultimate loophole through which the U.S. would allege that the Newe lost their land. Consequently, the amount of money owed to the Western Shoshone, according to the ICC, would be determined by the value of the Nevada land in 1872. This amounted to $21,350,000.[20]

By 1976, virtually all Western Shoshone bands agreed that the direction of Wilkinson and the ICC was contrary to the interests of the Western Shoshone Nation to secure the return of their lands.[21] To the Western Shoshone, their right to Newe territory had never been extinguished by the required express act of congress; the ICC had admitted as much when it found that extinguishment had not occurred through a specific act of congress, but rather through "gradual encroachment by whites, settlers and others, and the acquisition, disposition, or taking of the lands by the United States for its own

Typical expression of Shoshone sovereignty today. (*Photo: Bob Shaw*)

use and benefit, or the use and benefit of its citizens."[22] This novel "gradual encroachment" approach to aboriginal title extinguishment could not have been supported by law, and so, as often happens in Indian Law, it was a legal fiction created by expedience and quickly accepted by the federal courts.

Despite all efforts by the Western Shoshone to stay the proceedings of the ICC, the process had begun and would not be stopped. On August 15, 1977, the ICC denied the Western Shoshone motion to stop the commission proceedings, and awarded $26 million to the Western Shoshone for extinguishment of the title to Newe Sogobia. The Court of Claims denied the Newe appeal, writing that if the Newe "desire to avert the extinguishment of their land claims by final payment they should go to Congress" for redress. Ultimately, on December 19, 1979, the Clerk of the Court of Claims certified the ICC award in the amount of $26,145,189.89, and placed the money in a trust account at the U.S. Treasury for the Newe.[23]

One analyst of the case suggests that if the United States were honest in its valuation date of the taking of Newe land, the date would be December 19, 1979 - the date of the ICC award, since the ICC could point to no other extinguishment date. The United States should compensate the Shoshone in 1979 land values and not those of 1872. Consequently, the value of the land "that would be more realistic, assuming the Western Shoshone were prepared to ignore violations of the Ruby Valley treaty, would be in the neighborhood of $40 billion. On a *per capita* basis of distribution, the United States should be paying each Shoshone roughly $20 million each...The United Sates of America has already received billions of dollars in resources and use from Newe territory just in the last 125 years. Despite the obvious benefit, the U.S. government is only prepared to offer the Shoshone less than a penny of actual value for each acre of Newe Territory."[24]

The Newe have refused payment for their homeland, continuing to assert that their lands were never lawfully taken from them, and that they retain aboriginal title to them. The vast majority of Western Shoshone have voted to refuse the ICC award. Raymond Yowell, chairman of the Western Shoshone Sacred Lands Association, succinctly stated the issues in this case, and expressed the attitude of the traditional Newe: "What is at issue is the honor of the United States. We are not a politically powerful people. We entered into the Treaty of Ruby Valley as co-equal sovereign nations...The land to the traditional Shoshone is sacred. It is the basis for our lives. To take away the land is to take away the lives of the people."[25]

Because the ICC had no independent authority to extinguish Indian title itself, and the issue of extinguishment had never been litigated during the course of the ICC process, a major federal court case arose to decide whether or not the Newe aboriginal title had been extinguished. Known as the *Dann Cases*, this litigation would play a fundamentally important role in determining the status of Western Shoshone title.

The Dann Cases

This litigation began when two Shoshone sisters, Carrie and Mary Dann, and their families, known collectively as the Dann Band, were charged with trespassing on lands claimed by the U.S. Bureau of Land Management (BLM). The Danns, as well as the Western Shoshone National Council, maintained that the lands of the Dann Band, and the other 24 million acres of Western Shoshone land, remained part of the Western Shoshone national territory. Because it was part of Newe Sogobia, the Danns asserted that the BLM had no jurisdiction on their lands, and that if anyone should have been charged with trespass it should have been the U.S. government for trespassing on Newe territory.

In a series of complex arguments and decisions, the federal courts disagreed with one another about whether or not the title to Newe Sogobia had been extinguished, and on what date. In 1977, the U.S. District Court for the District of Nevada ruled that the Danns were trespassing because the Indian Claims Commission had decided in 1962 that the Newe title had been extinguished, but the court did not say when or how the extinguishment had taken place. On appeal, in 1978, the 9th Circuit Court of Appeals held that the question of extinguishment "was not actually litigated, and it has not been decided."[26] Consequently, the Court of Appeals reversed the lower court and remanded the case for further consideration.

The District Court did not reconsider the case on remand until after the final award certification of the ICC decision of $26 million on December 6,

Leaders of the Western Shoshone Sacred Land Association (from left to right): Sandy Dann, Glenn Holley, Kathleen Holley, Mary Dann, Carrie Dann, and Clifford Dann. (*Photo: Ilka Hartman*)

1979. On April 25, 1980, the District Court ruled against the Danns again, and stated that the "Western Shoshone Indians retained unextinguished title to their aboriginal lands until December of 1979, when the Indian Claims commission judgment became final."[27] In other words, the court held that it was the action of the ICC itself that extinguished the Newe title. Unfortunately, the ICC had no legal authority to extinguish title itself - it could only compensate Indians for title that had already been extinguished by act of congress.

On appeal, the 9th Circuit again reversed, ruling again that the title question had never been litigated and that the ICC award was not final because a plan of distribution was required to pay the Western Shoshone for their land.[28] Because the Western Shoshone did not want to sell their land, or to take the money awarded by the ICC, the Newe refused to cooperate with the U.S. government in the award distribution procedure. Under the ICC Act, once an Indian nation accepts an award for extinguishment of its title, it is prevented forever from raising the claim again. Consequently, the Western Shoshone have refused any payment.

In 1985, the U.S. Supreme Court reversed the opinion of the 9th Circuit,

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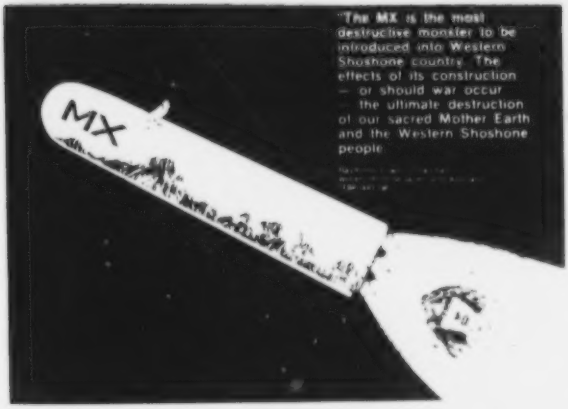
"The MX is the most destructive monster to be introduced into Western Shoshone country. The effects of its construction — or should war occur — the ultimate destruction of our sacred Mother Earth and the Western Shoshone people."
MX

Poster illustrating Western Shoshone Resistance to nuclearization. (*Poster by Jack R. Malotte*)

and held that Western Shoshone title had been extinguished "in the latter part of the 19th century," and that when the U.S. placed the ICC award into a Treasury Department account for the Western Shoshone, that constituted "payment" under the law.[29] Consequently, despite the repeated objections of the Shoshone that they never desired or consented to the sale of their lands, the court held that the issue of extinguishment of tribal aboriginal title was closed. In a seemingly cruel attempt to keep Newe hopes alive, the court, in a final paragraph, suggested that, while the issue of *tribal* aboriginal title had been decided, the Danns might be able to raise a defense based on *individual* aboriginal title.[30]

This issue was raised when the case was remanded to the lower courts for further consideration, but the 9th Circuit Court of Appeals ruled that, for the Danns, there were no aboriginal rights that would allow them to remain on their lands apart from the tribal aboriginal rights that the courts had decided had been extinguished. In the spring of 1990, the U.S. Supreme Court refused to hear the final appeal of the Dann Band, allowing the 9th Circuit decision to stand.

Newe Sogobia and the Nuclear Connection

One important consequence of the decades-long battle between the Newe and the United States involves the U.S. nuclear invasion of the Western Shoshone Nation. According to geographer Bernard Nietschmann, the United States nuclear testing facilities, which are in the center of Newe lands, have exploded 651 nuclear weapons or devices since 1963, making the Western Shoshone "the most bombed nation in the world."[31] Now, the United States

is planning to store a variety of nuclear wastes in caverns bored into Yucca Mountain, in southwest Newe Sogobia. In an effort to stem the contamination of its lands through nuclear testing and disposal, the Western Shoshone have joined with disarmament activists from around the world. When activists arrive at the U.S. nuclear testing facilities to protest further explosions, they are issued permits by the Western Shoshone National Council that allow the activists to protest the U.S. invasion of Newe lands. In part, the permit reads:

> The Western Shoshone Nation is calling upon citizens of the United States, as well as the world community of nations, to demand that the United States terminate its invasion of our lands for the evil purpose of testing nuclear bombs and other weapons of war.[32]

As with other fourth world peoples - in Australia, the Pacific, the Arctic and central Asia, the Newe are determined to regain control of their lands, and to cease nuclear testing in their homelands.

Conclusion

Prospects for the Western Shoshone do not seem bright. Nonetheless, they remain committed to the reclamation of their rights to land, hunting, fishing, natural resources, and the other elements that comprise their character as a nation. Despite their determination, the Newe are confronted by constant threats to their survival. The Bureau of Land Management (BLM) is constantly attempting to intimidate the Newe into accept the rulings of the U.S. - threatening to arrest Newe who use "BLM lands," and to impound their livestock grazing without BLM permits.

Some attorneys have also attempted to persuade some Newe individuals to accept the ICC award, now estimated at approximately $50 million, for distribution on a *per capita* basis. The most visible of these attorneys is John Paul Kennedy of the law firm of Edwards, McCoy and Kennedy of Salt Lake City, Utah. Kennedy gained notoriety as a partner in the law firm of Boyden, Kennedy and its role in supporting the BIA-created Hopi tribal government, while simultaneously representing Peabody Coal Company, in the Big Mountain relocation dispute in northern Arizona.[33] The Western Shoshone National Council filed formal charges with the Utah State Bar Association, alleging that Kennedy is attempting to divide the Western Shoshone people by promising them large, *per capita* payments from the ICC award. The National Council wrote:

> Mr. Kennedy, like the claims lawyers who preceded him, unjustifiably assures the people that such distribution will have no effect upon Western

> Shoshone efforts to confirm their aboriginal and treaty land rights. Of course, Mr. Kennedy's personal interest will only be in maximizing his share of the money damages; he has no interest in our continuing land rights which are of the foremost importance to our people.[34]

The Western Shoshone maintain their right to their homelands, and will continue to fight for its return. On several occasions, the National Council has expressed its willingness to negotiate a settlement of the land claims, but the United States has been insincere in finding a just and comprehensive solution. Recently, the Department of Interior has given some indication of a new, more flexible negotiating position, but no concrete results have materialized. The Newe have taken their case into the international arena, to the various organs of the United Nations, including the U.N. Working Group on Indigenous Populations, and will continue to pursue every avenue available to them to vindicate their claims. In 1980, Pearl Dann testified before the 4th Russell Tribunal in Rotterdam, the Netherlands, and concisely summarized the Western Shoshone claim and its relationship to other indigenous peoples:

> What is happening to my people is the same thing that is happening to Indian people throughout the United States and in other countries as well. The United States openly steals our land and violates the treaties they made with us. The United States uses fraudulent legal proceedings to do away with our land titles. The United States claims the complete right to take our land...The United States legal system allows the United States to take Indian land without any restriction at all...That is why it is so important for us to speak to the people of the world. It is not possible for us to protect ourselves from the theft of our lands, to protect ourselves from destruction by using the United States' legal system. We must have the support and understanding of other people of the world. You must help us to stop the United States from what they are doing.[35]

For further information on the struggle for Newe Sogobia, contact:

Western Shoshone National Council
P.O. Box 68
Duckwater, NV 89314
USA

or

Western Shoshone Sacred Lands Association
P.O. Box 185
Battle Mountain, NV 89820
USA

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Notes

1. For a discussion of the Western Shoshone (Newe) relationship to the land, See, *Newe Sogobia* (1982), a publication of the Western Shoshone Sacred Lands Association. Also see Crum, Steven J., 1987. "The Western Shoshone People and Their Attachment to the Land: A Twentieth Century Perspective," *Nevada Public Affairs Review*, No. 2, pp.13-8.

2. *Treaty of Ruby Valley*, 13 Stat. 663 (1863). For a discussion of the negotiations and other conditions surrounding the treaty negotiations, see Stewart, Omer C., "The Shoshone Claims Cases," in Imre Sutton (ed.), *Irredeemable America: The Indians' Estate and Land Claims*, University of New Mexico Press, Albuquerque, 1985. Also see *Western Shoshone Identifiable Group v. United States*, (Docket 326-K) 11 Indian Claims Commission 387, 35 Indian Claims Commission 457 (1975) and 40 Indian Claims Commission 304 (1977).

3. Stewart, *op. cit.*, p. 193.

4. Ryser, Rudolph C., "Newe Sogobia and the United States of America," Occasional Paper of the Center for World Indigenous Studies, Box 82038, Kenmore, WA, 1985.

5. *Ibid.*, *Treaty of Ruby Valley*, n. 3, Article 5.

6. Cohen, Felix, *Handbook of Federal Indian Law*, Miche Bobbs-Merrill Co., Charlottesville, VA, 1982 edition, pp. 489-90, citing *United States ex rel. Hualapi Indians v. Santa Fe Pacific Railroad*, 314 U.S. 339, 354 (1941).

7. *Newe Sogobia, op. cit.*, pp. 14-20.

8. *Ibid.*

9. *Indian Claims Commission Act*, 60 *Stat.* 1049, 25 U.S.C. 70 *et. seq.*

10. *Newe Sogobia, op. cit.*, n. 1, p. 13.

11. *Ibid.*

12. One commentator has concluded that the Indian Claims Commission was "a travesty - a mill for liquidating Indian claims by paying a few cents on the dollar, destroying Indian rights to their former land holdings and summarily excusing the United States from its solemn treaty obligations. Those who have benefitted from the Indian Claims Commission activity have been primarily the large mineral companies, ranchers, and other holders of lands illegally seized from their Indian owners, and the few attorneys who have handled the claims and who take ten percent of all awards." See Coulter, Robert T., "The Denial of Legal Remedies to Indian Nations Under U.S. Law," in Indian Law Resource Center (ed.), *Rethinking Indian Law*, National Lawyers Guild Committee on Native American Struggles, New York, 1982.

13. *Newe Sogobia, op. cit.*, p. 16.

14. *Ibid.*, pp. 16-7.

15. *Ibid.*

16. *Ibid.*

17. *Western Shoshone Identifiable Group v. United States*, 11 Indian Claims Commission 387, 416 (1962).

18. *Ibid.*, pp. 413-4.

19. *Newe Sogobia, op. cit.*, p. 17.

20. *Western Shoshone Identifiable Group v. United States*, 29 Indian Claims Commission 5, at 124.

21. *Western Shoshone Identifiable Group v. United States*, excerpts from the Memorandum of the Duckwater Shoshone Tribe, The Battle Mountain Indian Community, and the Western Shoshone Sacred Lands Association in Opposition to the Motion and Petition for Attorney Fees and Expenses, July 15, 1980, in *Rethinking Indian Law*, *op. cit.*, n. 12, pp. 68-9.

22. *Ibid.*, n. 17 at 416.

23. *Western Shoshone Identifiable Group v. United States*, 40 Indian Claims Commission 305 (1977).

24. Ryser, *op. cit.*, n. 4, p. 8.

25. *Newe Sogobia*, *op. cit.*, p. 20.

26. *United States v. Dann*, 572 F. 2d. 222 (9th Cir., 1978) (Dann I) at 226.

27. *United States v. Dann*, Civ. No. R-74-60 (Apr. 25, 1980) (Dann II).

28. *United States v. Dann*, 706 F. 2d. 919, 926 (1983) (Dann II).

29. *United States v. Dann*, 470 U.S. 39 (1985).

30. *Ibid.*, p. 45.

31. Nietschmann, Bernard and William Le Bon, "Nuclear Weapon States and Fourth World Nations," *Cultural Survival Quarterly*, Vol. 11, No. 4, p. 5.

32. *Ibid.*, p. 7.

33. For a discussion of these issues, see Kammer, Jerry, *The Second Long Walk: The Navajo-Hopi Land Dispute*, University of New Mexico Press, Albuquerque, 1980, pp. 77, 220. Also see...

34. Letter of May 10, 1989 from the Western Shoshone National Council to the Utah State Bar Disciplinary Committee, in author's personal files.

35. "Western Shoshone Statement Presented to the Fourth Russell Tribunal on the Rights of Indians in the Americas," Rotterdam, The Netherlands, November, 1980.

White Earth
The Land Struggle Continues

by Winona LaDuke

According to the First [federal] Circuit Court of Appeals, American Indian people don't have a right to due process under the law or just compensation for land losses, matter guaranteed citizens under the fifth amendment to the U.S. Constitution. In a setback to the White Earth Anishinabe (Chippewa) of Minnesota, and Indian nations more generally, the circuit court ruled that the White Earth Settlement Act of 1986 (WELSA) was constitutional, upholding a lower court ruling that WELSA provided "appropriate relief" to the Anishinabe for past land losses. The June 30, 1989 decision, while not surprising in light of the prevailing climate of opinion concerning indigenous land claims in the U.S., points to the extreme callousness with which Indians are treated in the federal legal system, and the dual standard of "justice" protecting those who illegally take Indian land while punishing the victims for "letting it happen."

The lawsuit which prompted all this judicial posturing, *Edna Emerson Littlewolf v. Hodel*, was brought in behalf of all White Earth tribal members and the reservation land rights organization Anishinabe Akeeng ("People's Land") by the New York-based Center for Constitutional Rights (CCR). Littlewolf and other plaintiffs are White Earth enrollees who were wrongfully dispossessed of land allotments (or interest in land) on the reservation over the past several decades. There has never really been any dispute as to whether their land was taken illegally. The question has been how their rightful claims might be resolved in a "just manner." Under WELSA, congress decided this might be best accomplished by retroactively clearing title to the stolen area by unilaterally extinguishing all further Indian claims to it. In return, the people of White Earth are to receive monetary compensation.

Historical Context

The White Earth Reservation, created under the Treaty of 1867, set aside 837,000 acres of pine forests, pristine lakes and prairie for the exclusive and permanent use and occupancy of the Anishinabe. Federal guarantees to protect the sanctity and integrity of this Anishinabe homeland were made in exchange for the people's agreement to cede a much larger portion of their traditional territory to the U.S. The White Earth land base, as defined in the

treaty, could easily have supported the material and other needs of its Anishinabe occupants. However, non-Indian land speculators and timber companies quickly began the orchestration of a legislative, judicial and administrative scheme to allow the transfer of White Earth acreage out of Anishinabe control without so much as a gesture to *tribal* consent required by treaty.

What followed was an orgy of land and resource stealing which is one of the more shameful in American history. By 1909, 80% of the reservation was in non-Indian hands. Plied on an individual basis with drink, falsified affidavits, mortgages on grocery bills and a landslide of illegal tax forfeitures, the bulk of the Anishinabe at White Earth were forced into the squalor of abject poverty. By 1915, almost one-third of the Indian population was infected with tuberculosis, trachoma and a host of other diseases. Family after family was forced into literal refugee settlements on White Earth itself, and people were increasingly compelled to leave the reservation altogether. By 1930, half the victims were scattered to the wind in places like Minneapolis and Chicago, while those who remained on the land faced three solid generations of existence among the very poorest strata of the North American population, a situation which remains ongoing today. At present, some 94% of White Earth is "owned" or controlled by non-Indian interests.

Seventy years after the onset of the unlawful "land boom" which led to these conditions, the federal government decided it was time to look at the problem, a course of action undertaken in response to a combination of American Indian Movement militancy and growing grassroots agitation on the reservation during the 1970s. In 1981, following two years of "study" of the mechanisms through which White Earth land had been transferred to non-Indians, federal investigators began to notify local whites that their land titles were "clouded." The government could not, however, simultaneously notify the Anishinabe of their specific land interests because it had "neglected" to probate Indian estates on the reservation for six decades. The result was chaotic and federal authorities quite literally balked at the implications. Instead of pressing charges or taking other legal action against the possessors of what was clearly stolen Indian property, they began to move towards a "legislative remedy." WELSA was the federal "solution."

WELSA

Instead of providing for the return of so much as one square inch of stolen property to its rightful owners, WELSA authorizes payment of "compensation" to them at a rate *"commensurate with its value at the time it was taken* [emphasis added]." As Michael Ratner and Mahlon Perkins, CCR attorneys represent-

ing the White Earth Anishinabe, have put it, "Nothing is said about the Indians being paid the price the land was worth in the early 1900s, an equivalent, even with compound interest, of only $50 or $60 per acre. The land is worth at least $600 per acre today. The Indians lost not only their land, but a minimum of $50 to $60 million dollars as well." The situation led a number of congressional insiders, as well as Marvin Manypenny, an organizer of Anishinabe Akeeng, to call for a "White Earth Non-Indian Relief Act" under which non-Indian landholders on the reservation would be compensated for their loss, and the Anishinabe would recover their territory. Needless to say, the idea met with a less than enthusiastic response on Capitol Hill.

"They just want to sweep the whole thing under the rug," says Manypenny. "This is a grave injustice, the loss of our land. And it's happened not only once, but twice, each time we establish our right to the land, the government decides to ignore the White Earth people."

Ironically, despite deep resistance to Anishinabe land recovery mounted by non-Indians holding deeds to individual land parcels on White Earth, they are by no means the primary beneficiaries of WELSA. To the contrary, the largest non-Indian "landowners" on the reservation are federal, state and county governments which together hold approximately 240,000 acres, about *five times* the acreage now controlled by the Anishinabe themselves. As Ratner and Perkins observe, "Much of this land could and should be returned to the Chippewas. No one need be displaced or lose his or her property for this to occur. Instead, the State of Minnesota returned only about 10,000 acres of land [under an agreement separate from WELSA]. The federal government did not give back one acre."

In their recent decision, Circuit Court Judges Robinson and Buckley determined that compensation on the basis of "market value at the time of the original transaction," plus interest, represented a "good faith effort to compensate plaintiffs fairly," and thus equated to just compensation under the fifth amendment. And, because the compensation was so "just," there was really no reason at all to worry about due process. The good judges also determined that, in any case, a six month limit to the period in which individual appeals might be filed, imposed through WELSA, amounted to "adequate time" for any Anishinabe to research his/her legal interest, find an attorney (probably to work *pro bono*), and file a claim. This remained their view despite having received clear evidence that crucial land allotment files maintained by the U.S. Interior Department's Bureau of Indian Affairs (BIA) had not been updated in sixty years and would therefore have to be constructed, virtually from scratch. Ratner calls the court's decision "dirty," saying the judges understood perfectly well that what the government was doing was wrong, but that they were politically motivated to rule against the Anishinabe nonetheless.

The Struggle Continues

In spite of such reverses, the people of White Earth continue their struggle to regain their homeland. The *Littlewolf* case will be appealed to the U.S. Supreme Court where, it must be admitted, there is little prospect that justice will be served in the matter. The federal high court has, after all, attained a somewhat amazing record of consistency in ruling against American Indian rights during the 1980s. The ten straight denials of indigenous rights to religious freedom entered into by the "justices" during the decade - including the infamous "G-O Road Decision" stipulating that speculative timbering interests in northern California outweighs Indian prerogatives to retain use of even their most sacred places, and a recent ruling that States of the Union have the authority to determine whether or not Indians are entitled to ingest sacramental peyote - are indicative of the trend.

To additional lawsuits, one of them filed by Marvin Manypenny, seek to recover illegally held allotments in private hand. They are, at present, slowly winding their way through the U.S. Eighth Circuit Court of Appeals, another entity not known for pro-Indian decisions. John Morrin of Anishinabe Akeeng points out that the circuit court will probably be guided by a recent supreme court decision entered in the Black Hills Land Claim Case first filed by the Lakota in 1921. In this instance, the justices stipulated that they would not "rule against the entire American system of private property" by ordering the return of land even they themselves had acknowledged was illegally taken, at least not to an Indian nation. Morrin points out that, "If it's an Indian private property right at issue, you can forget about it. But if the private property is in the hands of some settler or his descendant, then it's SACRED."

Another effort, called the White Earth Land Recovery Project (WELRP), began in early 1990. Kicked off with money from the Reebok Human Rights Award (ed. note: LaDuke was a recipient of this award in 1989), the program is aimed at retrieving by negotiation the one-third of the reservation presently held by the state and federal governments. Additionally, the organization is undertaking an "acquisitions and negotiations plan" to recover the approximate one-fifth of White Earth currently in the hands of absentee landholders. Of particular importance to traditional Anishinabe, WELRP is targeting as a high priority the reacquisition of burial grounds and ceremonial sites within the official reservation boundaries, taking them "off the market" and back into Indian custody.

Relatedly, WELRP activists are planning to launch a small-scale organic farm on recovered lands within the next two years, and will be heavily involved in preserving from outside "development" hunting, fishing, wild rice and other harvesting lands on the reservation, as well as struggling to

reinforce Anishinabe treaty rights to engage in such traditional economic pursuits as fishing and rice gathering in off-reservation locales. These areas of initiative are seen as the front end of a more comprehensive White Earth self-sufficiency effort which which will be developed in the years to come.

This work in protecting treaty rights, hunting and harvesting is linked to similar efforts throughout the Great Lakes region. As anti-Indian groups and a white vigilante movement grow in strength and virulence throughout Minnesota and Wisconsin, seeking to abrogate treaties and to eliminate corresponding Indian access to the harvest of natural resources upon which much of their subsistence depends, the need for indigenous people to organize to protect their landbase and lifeways becomes ever clearer (see Faye Cohen's essay in this volume). Even while U.S. courts rule against Indian rights, the people of White Earth and elsewhere have come to increasingly reassert their sovereign status. Those who wish to help, or who simply wish to receive further information in the matter, may do so by contacting:

Anishinabe Akeeng
P.O. Box 356
White Earth, MN 56591
or
1530 E. Franklin Ave.
Minneapolis, MN 55404

Genocide in Arizona?
The "Navajo-Hopi Land Dispute" in Perspective

by Ward Churchill

Genocide is always and everywhere a political occurrence.

– Irving Louis Horowitz –

There are an estimated twenty billion tons of high grade, low-sulfur coal underlying a stretch of Arizona desert known as Black Mesa. Rich veins of the mineral rest so near the surface that erosion has exposed them to sunlight in many places. A veritable stripminer's delight, the situation presents obviously lucrative potentials to the corporate interests presently profiting from America's spiraling energy consumption. The only fly in the oil of commerce at this point is the fact that the land which would be destroyed in extracting the "black gold" is inhabited by a sizable number of people who will not – indeed, from their perspective, cannot – leave. This problem has caused the federal government to engage in one of the more cynical and convoluted processes of legalized expropriation in its long and sordid history of Indian affairs.

Historical Background

It all began in the 1860s when the army fought "The Kit Carson Campaign," a vicious war designed to eliminate the Diné (Navajo) people of the Southwest as a threat to ranching and mining concerns. The war featured a scorched earth policy directed against such targets as the Diné sheep herds and the peach orchards which had been carefully established over several generations at the bottom of Cañon de Chelly, in northeastern Arizona. The plan was to starve the Indians into submission, and it worked very well. The whole thing culminated in the forced march of virtually the entire Diné people to a concentration camp at Bosque Redondo, in eastern New Mexico, a desolate place where about a third of them died of disease and exposure in barely two years.[1] In 1868, hoping to avoid a scandal concerning its own treatment of a vanquished foe after having tried and convicted officers of the Confederate Army for engaging in comparable atrocities against U.S. troops at such prison camps as Andersonville, the government entered into a treaty with the Diné. It acknowledged, among other things, their right to a huge piece of barren land, mostly in western new Mexico.[2]

Over the next decade, however, it was discovered that much of the new reservation was usable as rangeland. Consequently, the government con-

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tinually "adjusted" the boundaries westward, into Arizona until the territory of the Diné completely engulfed that of another people, the Hopi. Still there was no particular problem in many ways. The Diné, whose economy was based on sheepherding, lived dispersed upon the land, while the Hopi, agriculturalists, live clustered in permanent villages. Conflict was minimal; the Indians coexisted in a sort of natural balance, intermarrying frequently enough to create an interethnic entity called the Tobacco Clan.[3]

This began to change in 1882, when President Chester A. Arthur, in order to provide jurisdiction to J.H. Fleming, an Indian agent assisting Mormon missionaries in kidnapping Hopi children ("to educate them"), created a Hopi Reservation within the area already reserved for the Diné. Arbitrarily designated

as being a rectangle of 1° longitude by 1° of latitude, the new reservation left Moenkopi, a major Hopi village, outside the boundary. Conversely, much Diné pasturage – and at least 300 Diné – were contained within the area, a matter supposedly accommodated by wording that it would be the territory of the Hopi and "such other Indians as the President may select."[4]

For nearly a generation equilibrium was maintained. Then, in 1919, a group of mining companies attempted to negotiate mineral leases on Diné land. In 1920, the traditional Diné council of elders ("chiefs"), a mechanism of governance drawn in equal proportions from each of the clans comprising the nation, and which still held undisputed power in such matters, unanimously rejected the idea. The companies lobbied, and, in 1923, the federal government unilaterally replaced the traditional Diné government with a "Grand Council" composed of individuals of its own choosing. Being made up of men compulsorily educated off-reservation rather than traditionals, and owing their status to Washington rather than the people they ostensibly represented, the new council promptly signed the leasing instruments. Thereafter, the council was the only entity recognized by the federal government as "legitimately" representing Diné interests.[5]

This experiment was such a success that an idea was shortly hatched to replace *all* traditional Indian governments with modern "democratic" forms, based on models of corporate management. In 1934, with passage of the so-called "Indian Reorganization Act" (IRA; 25 U.S.C.A. § 461), this concept became law. Indian resistance to the IRA varied from place to place, a "rule of thumb" being that the more "acculturated" the people, the greater the ease with which it was accepted.[6] At Hopi, where the traditional *Kikmongwe* form of government was/is still very much alive, 90% of all people eligible to vote for or against reorganization simply refused to participate, boycotting entirely a referendum required to garner at least the illusion they had accepted reorganization. As BIA employee Oliver LaFarge observed at the time:

> [T]here were only 13 people in the [Hopi village of Hotevilla] willing to go to the polls out of a potential voting population of 250, [a spiritual leader] having announced he would have nothing to do with so un-Hopi a thing as a referendum. Here we also see the Hopi method of opposition...abstention of almost the whole village should be interpreted as a heavy opposition vote.[7]

The same situation prevailed in each of the Hopi villages. Indian Commissioner John Collier overcame this "difficulty" by declaring all abstentions as being "yes" votes, providing the appearance (to outsiders, such as the American public) that the Hopis had all but unanimously approved implementation of the IRA. Despite its clear rejection of Washington's governmen-

Wayne Sekaquaptewa, owner/editor/publisher of the viciously anti-Diné newspaper *Qua Toqti*. (*Photo: Anonymous*)

tal formula, Hopi was then quickly reorganized, opening a deep schism within that society which has not only never healed, but which is in some ways more acute today than it was fifty years ago.[8]

Effects of Reorganization

As is usually the case where patently imposed forms of governance are utilized by a colonial power to administer a subject people, the new Hopi tribal council rapidly learned to convert service to the oppressor into personal profit. Leadership of the 10% segment of Hopi society which had been assimilated into non-Hopi values via compulsory education and Mormon indoctrination – this group represented the literal totality of Hopi voter turnout during reorganization, and in all subsequent Hopi "elections" – had long been the station of the Sekaquaptewa family.[9] The men of the family – Abbott and Emory; later Emory Jr. and Wayne – rapidly captured political ascendancy within the council. Correspondingly, they garnered a virtual monopoly on incoming U.S. government contracts and concessions, business starts and the like. The new wealth and position was duly invested in a system of patronage among the Mormon Hopis, and this most un-Hopi sector of Hopi society became far and away its richest and most powerful strata. In short order, what had by and large remained a remarkably homogeneous and egalitarian culture was thus saddled with the sorts of ideological polarization, class structure and elitism marking Euroamerican "civilization."[10]

Indian Commissioner Collier was meanwhile quite concerned that the concept of reorganization – upon which he had staked his political future and

personal credibility – would work in terms of making IRA governments functional "successful" reflections of mainstream corporate society. The Mormon Hopis were only too happy to oblige in moving Collier's grand scheme along, serving as something of a showpiece in exchange for a *quid pro quo* arrangement by which they became the only Hopi entity with which the U.S. would deal directly. The ability of the *Kikmongwe* to fulfil its traditional role of conducting Hopi affairs was correspondingly undermined drastically. By 1940, the Sekaquaptewas and their followers had converted their alignment with the federal government into control, not only of all Hopi political offices, appointed positions and the budgets that went with them, but the sole Hopi newspaper (*Qua Toqti*) grazing interests and externally generated cash flow as well. However, they had still bigger plans.

These had emerged clearly by 1943, when the council, in collaboration with the Bureau of Indian Affairs (BIA) and over the strenuous objections of the *Kikmongwe*, successfully consummated a lobbying effort for the creation of "Grazing District 6," a 650,013 acre area surrounding the main Hopi villages and marked off for "exclusive Hopi use and occupancy." Insofar as nothing within the traditional Hopi lifeways had changed to cause them to disperse across the land, the only beneficiaries were the Sekaquaptewa clique. Their grazing activities and revenues were considerably expanded as a result of the establishment of the district. Meanwhile, some 100 Diné families who had lived on the newly defined District 6 land for generations were forced to relocate beyond its boundaries into the remainder of the 1882 Executive Order Area.[11]

Enter John Boyden

By the early-1950s, with their gains of the '40s consolidated and digested, the Sekaquaptewas were once again casting about for ways to expand their clout and income. Following the consolidation of Grazing District 6, they had allowed their council activities to lapse for several years while they pursued personal business enterprises. In 1951, however, they appear to have determined that reconstitution of the IRA government would be an expedient means through which to advance their interests. Devout Mormons, it was perhaps natural that they should retain the services of a well-connected Salt Lake City Mormon lawyer named John Boyden to pursue this end in the name of Hopi self-governance.[12] Undoubtedly sensing a potential for immense profitability both for himself and for his church in the move, Boyden accepted the position of Hopi Tribal Attorney. At the top of his list of priorities in doing so, by agreement with the Sekaquaptewas, was an initiative to claim *all* of the 1882 Executive Order Area in the name of the Hopi IRA government. This, he

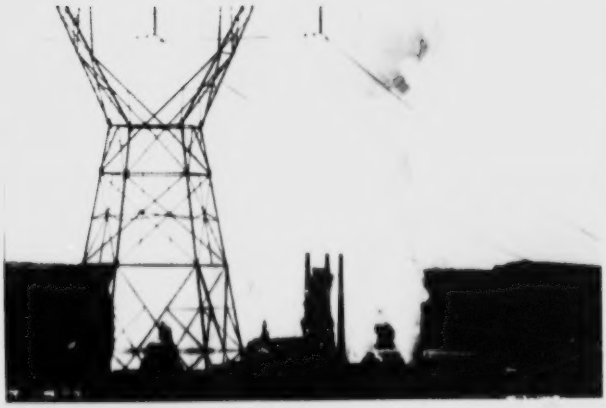
"Father of the Land Dispute" attorney John Boyden. Without his legal and political manipulations, relocation would likely never have become a reality. (*Photo: Hopi Tribal Council*)

pursued through a strategy of first authoring legislation allowing him to do so, and then pursuing lawsuits such as the *Healing v. Jones* cases.[13]

What was at issue was no longer merely the land, concomitant grazing rights and the like. By 1955, the mineral assets of the Four Corners region were being realized by the U.S. government and corporations.[14] Anaconda, Kerr-McGee and other energy conglomerates were buying leases and opening mining/milling operations feeding the guaranteed market established by the ore buying program of the Atomic Energy Commission. Standard, Phillips, Gulf and Mobil (among others) were moving in on oil and natural gas properties.[15] The "worthless desert" into which the U.S. had shoved the Indians was suddenly appearing to be a resource mecca, and it was felt that the 1882 Executive Order Area might be a particularly rich locale.

Indications are that Boyden and the Sekaquaptewas originally hoped that what might be argued in court as constituting Hopi territory would overlie a portion of the Grants Uranium Belt. This did not pan out, however, and royalties (and contamination) from the uranium boom continued to accrue only to neighboring peoples such as Navajo and Laguna Pueblo (see "Native America: The Political Economy of Radioactive Colonization," in this volume). Still, oil exploration proved a more lucrative proposition, and Boyden opened sealed bidding for leasing rights with District 6 during the fall of 1964. The proceeds came to $2.2 million, of which a flat $1 million in fees and bonuses was paid to Boyden's Salt Lake City law firm.[16]

With his own coffers brimming, the attorney turned to the service of his church as well as his Hopi and corporate clientele. Enlisting the assistance of a pair of regional politicos – Secretary of Interior Stewart Udall (a fellow

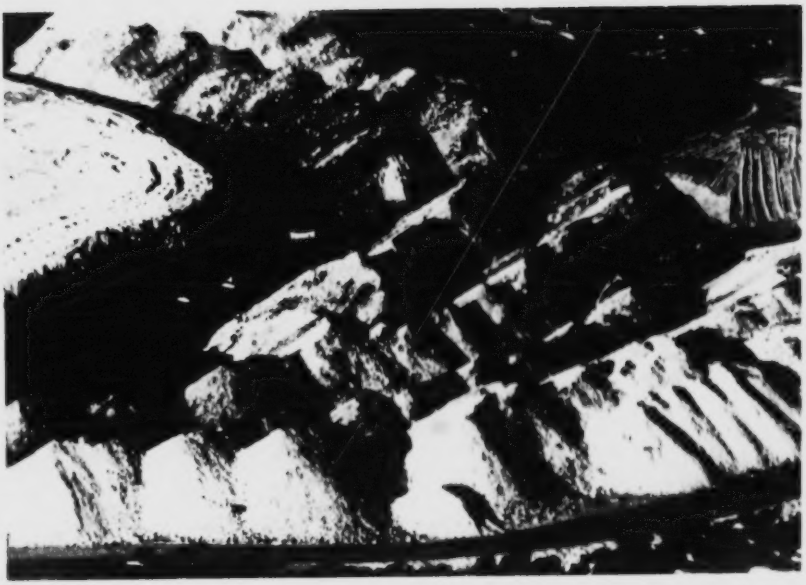


The Navajo Generating Station at Page, Arizona, fed by Peabody Coal mining operations on Black Mesa, *circa* 1980 (*Photo: Zach Singer*)

Mormon) and Colorado Congressman Wayne Aspinall – both of whom professed that energy development would be "good for the West," he was able to negotiate a triangular coal leasing arrangement between the federally-approved Navajo and Hopi councils on the one hand, and the Peabody Coal Company (which he represented, along with the Hopi council) on the other. Kayenta, location of the Peabody mine, on Black Mesa in the northern extreme of the 1882 Executive Order Area, sits astride what has turned out to be perhaps the richest low sulphur coal vein ever discovered in North America. Not coincidentally, a controlling interest in Peabody was held at that time by the Mormon Church, for which Boyden was also serving as legal counsel during the lease negotiations. Overall, the attorney's take on the deal is said to have again run into seven figures.[17] For him, things were moving right along.

The Nature of the "Land Dispute"

With a long-term money-maker functioning at Black Mesa, Boyden returned his attentions to his real agenda: securing the entirety of the Executive Order Area, and the fossil fuels underlying it, in behalf of the Sekaquaptewa faction. While opening moves in this gambit had been made during the 1950s, the serious campaign really got off the ground during the early '70s. In a major suit, *Hamilton v. Nakai*, Boyden argued that an earlier judicial determination – advanced in the second *Healing v. Jones* case – that both the Hopi and Diné were entitled to "equal use and benefit" from the 1882 Executive Order Area outside of Grazing District 6 meant the Diné had no right to keep livestock in numbers exceeding "their half" of the federally established "carrying capacity" of the land. This held true, he said, even if no Hopis were keeping livestock there. Boyden was thereby able to obtain court



Peabody coal mine at Black Mesa *circa* 1980. (*Photo: Dan Budnik*)

orders requiring a 90% reduction in the number of Diné livestock within the Joint Use Area (JUA).[18] Any such reduction being tantamount to starvation for a people like the traditional Diné, dependent for subsistence upon a sheep economy, Boyden and the Sekaquaptewas anticipated this courtroom victory would literally drive their opponents out of the JUA, into the Navajo Nation proper. With virtually no Diné living in the contested territory, arguments concerning the exclusivity of Hopi interests and prerogatives therein would be much more plausible than had previously been the case.

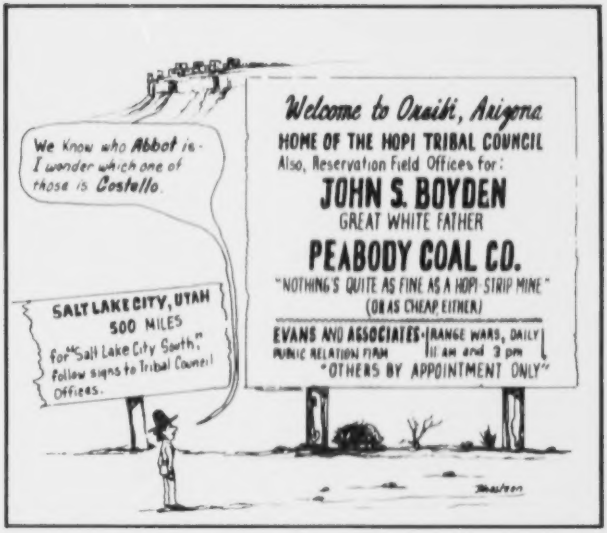
On the judicial front, however, the Boyden/Sekaquaptewa combine had apparently not calculated on the fact that the targeted Diné really had no place to go (the land base of the Navajo Nation already being saturated with sheep). The Diné had no alternative but to refuse to comply, a situation which forced Boyden into a whole series of related suits, each of which generated additional judicial decrees against them – a freeze was placed upon their ability to build new homes, corrals or other structures within the JUA, for example – but none of which in themselves translated into the desired result of forcing the Diné out of the 1882 area.[19] Federal authorities could find no interest of sufficient magnitude in the JUA issue to motivate them to deploy the level of force necessary to implement their courts' various decisions.

And then came the "energy crisis" of the 1970s.

Overnight, "energy self-sufficiency" became a national obsession. Shale oil, coal gasification and other esoteric terminology became household matters of discussion. Congress sat down to do a quick inventory of its known energy assets, and, suddenly, the Black Mesa coal which had barely elicited a "ho-hum" response from legislators a few months before, became a focus of attention. Arizona superhawks such as Barry Goldwater and Congressman Sam Steiger in particular saw a way to put their state on the energy map of "national interest" by consummating plans already laid by powerful economic entities such as Western Energy Supply and Transmission (WEST) Associates.[20]

In a way, there was only one hitch to the program: it was/is impossible to strip mine the land so long as Diné people were/are living on it. The solution, of course, for the federal government as well as the Hopi council and the energy corporations, was to remove the people. Hence, as early as 1971, Boyden offered his services in drafting a bill to be introduced in the U.S. House of Representatives calling for the formal division of the JUA into halves. The draft called for all Hopis living on the Diné side of the partition line to be compulsorily relocated into Hopi territory and vice versa. Given that virtually no Hopis actually lived in the JUA, the law would serve the purpose of emptying 50% of the desired acreage of population and thereby open it up for mining.[21] Several scientific studies already suggested that once strip mining and slurry operations commenced in so substantial a portion of Black Mesa, the adjoining areas would be rendered uninhabitable in short order, forcing the Diné off even their remaining portion of the 1882 area.[22] The Boyden/Steiger plan was thus clearly to use the appearance of an "equitable resolution" to a property rights question as a means to totally dispossess the JUA Diné, accomplishing what the Mormon Hopis had been trying to do all along.

Steiger dutifully introduced his draft legislation in 1972, but it met with certain PR problems. After all, the mass forced relocation of indigenous people was something which had not been done in North America since the 19th century. While it squeaked through the House by a narrow margin, it stalled in the Senate.[23] The congressional fear seems to have been that, energy crisis notwithstanding, the American public might balk at such a policy; this seemed especially true in the immediate context of the civil rights, anti-war and Black Power movements. Democratic Party presidential nominee George McGovern came out against the idea of partition and relocation in the JUA, and even Goldwater, the arch-conservative, expressed doubts about the wisdom of the plan under such circumstances.[24] A plausible "humanitarian cover" was needed, under which to effect the legislation necessary to clear the population from much of the JUA.


We know who Abbot is - I wonder which one of those is Costello.
Welcome to Oraibi, Arizona
HOME OF THE HOPI TRIBAL COUNCIL
Also, Reservation Field Offices for:
JOHN S. BOYDEN
GREAT WHITE FATHER
PEABODY COAL CO.
"NOTHING'S QUITE AS FINE AS A HOPI STRIP MINE"
(OR AS CHEAP EITHER)
EVANS AND ASSOCIATES - PUBLIC RELATION FIRM
RANGE WARS, DAILY 11 AM and 3 pm
"OTHERS BY APPOINTMENT ONLY"
SALT LAKE CITY, UTAH
500 MILES
For "Salt Lake City South," follow signs to Tribal Council Offices.

Cartoon from *Navajo Times* during the "range war." Most intertribal "violence" during this period followed the same verbal rather than physical pattern.

Here, Boyden once again proved his mettle. Retaining David Evans & Associates – yet another Mormon controlled Salt Lake City firm – to handle the "public image of the Hopi Tribe," he oversaw the creation of something called "the Navajo-Hopi range dispute." Within this scenario, which the Evans PR people packaged rather sensationally and then fed to the press in massive doses, the Hopis and Diné occupying the JUA were at irreconcilable odds over ownership of the land. The result of this was a virtual "shooting war" between the two indigenous peoples fueled not only by the property rights dispute, but by "deep historical and intercultural animosities." No mention was made of mineral interests, or that Evans was simultaneously representing WEST Associates, voracious as that consortium was to mine and burn JUA coal. As Washington Post reporter Mark Panitch recounted in 1974:

> The relationship between the Hopi council and the power companies became almost symbiotic. On the one hand, [Hopi Tribal Chairman Clarence] Hamilton speeches written by Evans would be distributed through the public relations machinery of 23 major Western utilities [comprising the WEST group]. On the other hand, these utilities would tell their customers, often through local media contacts, that the Hopis were "good Indians" who wouldn't shut off

> the juice which ran their air conditioners...Because of the efforts by representatives of the Hopi to present the [IRA government's] viewpoint, the Hopi rapidly took on the aura of the underdog who just wanted to help his white brother. Some of the Navajo, on the other hand, were saying threatening things about closing down polluting power plants and requiring expensive reclamation of strip-mined land.[25]

The image of "range war type violence" was reinforced by Evans photographers' snapshots of out-buildings and junk vehicles abandoned at various locations in the JUA. These were subsequently used for target practice by teenaged "plinkers" (a common enough practice throughout rural America), and were therefore often riddled with bullet holes. The Evans group presented their photos to the media as evidence of periodic "firefights" between Hopis and Dinés. As Panitch put it:

> During 1971-72, few newspapers escaped a Sunday feature on the "range war" about to break out between two hostile tribes. Photos of burned corrals and shot up stock tanks and wells were printed...By calling Evans and Associates, a TV crew could arrange a roundup of trespassing Navajo stock. Occasionally, when a roundup was in progress, Southwestern newsmen would be telephoned and notified of the event.[26]

What real violence there was came mainly from a group of thugs, such as a non-Indian named Elmer Randolph, put on the payroll and designated as "Hopi Tribal Rangers" by the Mormon faction. Their specialty was beating to a pulp and arresting for trespass any Diné come to retrieve sheep which had strayed into Grazing District 6.[27] When a group of Diné attempted to erect a fence to keep their livestock off the Hopi land, the Sekaquaptewas first called a television crew to the spot and then personally tore the fence down, demanding before the cameras that the Arizona National Guard be dispatched to "restore order" within the JUA. This, too, was straight-facedly passed off by news commentators as indication of "the level of violence existing among the Indians."[28] The federal government was morally obligated, so the argument went, to physically separate the two "warring groups" before there were fatalities. Predictably, Congressman Steiger gave this theme official voice:

> There is nothing funny about the violence which has already transpired – livestock mutilations, corral burnings, fence destruction, water tank burnings, and at least one shooting incident. If we permit ourselves to be seduced into some kind of legal procrastination and someone is killed, I am sure we would assume the responsibility that is patently ours. Let us not wait for that kind of catalyst.[29]

At this juncture, Arizona Senator Barry Goldwater, one of the more powerful political figures in the country, decided the time was ripe to weigh

Abbott Sekaquaptewa, primary power within the Mormon Hopi faction during the relocation era; according to some who knew him, he was motivated by nothing so much as "a desire to hurt Navajos" (*Photo: Mark Lennihan*)

in along the Boyden/Sekaquaptewa/Steiger axis. "I have not supported the Steiger approach mostly because it involved money [to relocate the impacted Diné]," Goldwater announced, "[but now] I do not think we have to pay money to relocate Indians, when in the case of the Navajo they have 16 million acres [outside the JUA]." He went on to assert with bold-faced falsity that the Diné had "literally tens of thousands of acres that are not being used" and which were therefore available to absorb those displaced by the partition and relocation proposal, ostensibly without significantly altering their way of life.[28] John Boyden seized this opportunity to draft a new bill, this one to be introduced by Goldwater and Arizona's other senator, Pat Fannin. It called for partition and the rapid, uncompensated, and compulsory relocation of all Diné residing within the Hopi portion of the JUA. By comparison, the Steiger draft bill, which had called for the federal government to underwrite all costs associated with relocation, including the acquisition of additional lands as needed to resettle those effected, seemed benign.[29] This, of course, did much to attract support to the latter.

Relocation Becomes Law

Actually, the Goldwater/Fannin initiative was a ruse designed to drive liberal Democrats into countering the draft bill's harsh proposals, with a "gentler" plan of their own. This assumed the form of House Resolution 10337, yet another draft bill in which Boyden took a hand, this one introduced by liberal Utah Congressman Wayne Owens. It called not only for compensation to the victims of the partition, as the Steiger draft had already done, but a decade-long time period during which the relocation was to be "phased in" so that those to be moved would not be overly traumatized. Tellingly, when Owens placed his proposition on the table, Steiger promptly abandoned his own draft and became an endorser of the Owens Bill. This newly-hatched liberal/conservative coalition was destined to finally produce Boyden's desired result.

Despite a letter sent by Arizona Congressman Manuel Lujan that passage of H.R. 10337 might result in "a bloodbath in northern Arizona that would make the My Lai Massacre look like a Sunday School picnic," and that it would in any event be "the most shameful act this government has perpetrated on its citizens since Colonial days," the Owens/Boyden concept was approved by the House Interior Committee by voice vote in February 1974.[32] It was then forwarded to the full house for passage. This was accomplished on May 29, 1974, by a vote of 290 to 38.[33] On the same day, Judge Walsh issued a contempt of court decree against Chairman Peter McDonald and the Navajo tribal government for having failed to comply with his order to reduce Diné livestock in the JUA.[34]

The bill was passed by the senate shortly thereafter, by a vote of 72-0 and in a somewhat different form than it had been approved by the house. Although this usually precipitates an *ad hoc* committee meeting involving representatives of both chambers in order to hammer out a mutually acceptable joint version of the legislation, in this instance the House took the extraordinary step of simply approving the Senate version without further discussion.[35] The statute was then routed on an urgent basis to President Gerald R. Ford, who signed it without reading it, while enjoying a ski vacation in Vail, Colorado.[36]

Enacted as Public Law 93-531, the bill required a 50-50 division of the JUA, with the actual partition boundary to be established by the federal district court in Arizona.[37] It established a three-member Navajo-Hopi Relocation Commission, to be appointed by the secretary of interior. Within two years of the date the court's partition line was defined, the commission was charged with submitting a plan to congress detailing how relocation was to be accomplished. Thirty days after congress approved the relocation plan, a five year period would begin during which relocation would be carried out.

A total of $37 million was initially budgeted, both to underwrite the relocation commission's functioning, and to pay "incentive bonuses" of

Utah Congressman Wayne Owens, the "liberal" who championed Boyden's third draft bill, the version which ultimately became P.L. 93-531. (*Photo: U.S. House of Representatives*)

$5,000 to the head of each Diné family which "voluntarily" agreed to relocate during the first operational year of the program. Bonuses of $4,000 were slated to be paid to those who agreed to go during the second year, $3,000 during the third, and $2,000 during the fourth. In addition, each family of three or fewer individuals was deemed eligible to receive up to $17,000 with which to acquire "replacement housing." Families of four or more could receive up to $25,000 for this purpose.

P.L. 93-531 also contained several other important provisions. It directed the secretary of interior to implement Judge Walsh's order for Diné livestock reduction by outright impoundment. It authorized the secretary to sell to the Navajo Nation up to 250,000 acres of land under jurisdiction of the Bureau of Land Management at "fair market value," and provided Navajo authority to acquire up to 150,000 additional acres of privately held land (this is as opposed to 911,000 acres from which Diné were ordered removed in the JUA).[28] The law also authorized litigation to resolve Hopi claims to land surrounding the village of Moenkopi, left out of the original Executive Order Area.[29]

Problems with P.L. 95-531

The first grit in P.L. 95-931's gears appeared almost immediately, when it was discovered that virtually none of the targeted people were likely to relocate on anything resembling a voluntary basis. The second followed

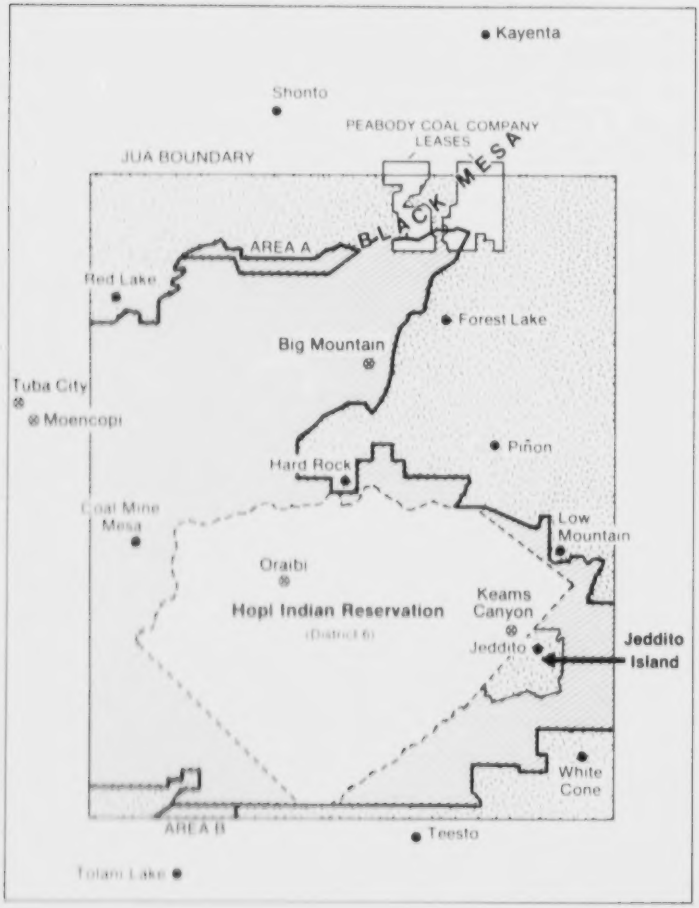
shortly thereafter, when it was found that the size of the Diné population to be affected had been dramatically underestimated. This was due to language in the act which stipulated the partition would "include the higher density population areas of each tribe within the portion of the lands partitioned to each tribe to minimize and avoid undue social, economic, and cultural disruption insofar as possible." Congress had apparently accepted without question an assertion made by John Boyden through Evans and Associates that if this principle were adhered to, the number of impacted Diné would be "about 3,500."[45] There is no reason to assume this information was accurate.

More to the point, when the court's partition line was ultimately finalized on February 10, 1977, it conformed much more closely to coal deposits than to demography.[46] Those areas Peabody preferred to mine first, including areas of the northern JUA furthest from the Hopi mesas but adjoining the Kayenta mining sites, were included within the Hopi territory (see map). Consequently, estimates of the number of Diné to be relocated was quickly raised to 9,525 by 1980,[47] and is now calculated to have involved 17,500 people overall.[48] Only 109 Hopis were effected, and their relocation was completed in 1976.[49]

Correspondingly, the costs associated with the relocation program escalated wildly. While in 1974, the congress estimated the entire effort could be underwritten through allocation of $28 million in direct costs and another $9 million in "administrative overhead," by 1985 the relocation alone was consuming $4 million per year (having by then expended nearly $21 million in all). With a Diné population vastly larger (and more resistant) than originally projected, direct costs were by 1985 being estimated at a level of "at least $500 million."[50] Inflation and other factors have, since then, driven even this enormous amount considerably higher. Similarly, the original time-span conceived as being required for relocation to be fully implemented – which placed the completion of the program in 1982 – quickly proved impractical. Revised several times, the completion date was by 1985 being projected into 1993.[51]

Predictably, Barry Goldwater's assertion that the Navajo Nation had "tens of thousands" of idle acres outside the JUA onto which relocatees could move and continue their traditional lifeways proved absolutely false. Leaving aside the spiritual significance of specific JUA geography to its Diné residents, it was well known that the entirety of the reservation, consisting of arid and semi-arid terrain, had been saturated with sheep (and thus with traditional people) since at least as early as the mid-1930s.[52] Meanwhile, the 400,000 acres of "replacement lands" authorized under P.L. 93-531 for acquisition by the Navajo Nation as a means of absorbing "surplus" relocatees was blocked by a combination of conflicting congressional interests, a require-

Partition of the Joint Use Area
Under P.L. 93-531



Graphics: Steve Brown

ment in the law that such land be within 18 miles of the reservation's boundaries, non-Indian lobbying, and avarice on the part of the Navajo tribal government itself.[48] The result was that the relocatees were left with no place to go other than urban areas which represented the very antithesis of their way of life.

Belatedly, congress also began to "discover" the falsity of the "range war" thesis, and that the Hopis were hardly unified in their desire to see the Diné pushed from half the JUA. There was no excuse for this. As early as the beginning of 1972, *Kikmongwe* Mina Lansa had come before the House Interior Committee, while the Steiger Bill was being considered, and made it clear that the traditional Hopi majority wished to see the Diné remain on the land, insofar as this represented a barrier to strip mining in the JUA. She further informed the legislators that:

> The [IRA] council of people, Clarence Hamilton and others, say all Hopis are supporting this bill through the newspapers and publicizing to the world that both Hopi and Navajo are going to fight each other. These things are not true, and it makes us very ashamed to see that some of our young people who claim to represent us created much publicity in this way while in this capital lately.[49]

In 1975, Lansa took the unprecedented step (for a Kikmongwe) step of openly participating in a largely non-Indian coalition seeking to repeal P.L. 93-531. "We should all work together against Washington to revoke this bill," she said. "The Hopi council favors this bill. But as a Hopi chief, I say no. The Hopis and Navajos can live right where they are."[50] She withdrew her support to the non-Indian group when one of its leaders, Bill Morrall, called for the abolition of both the Hopi and Navajo reservations, *per se*.[51] However, her opposition to the Hopi IRA government and the relocation law, and her support of the JUA Diné, remained outspoken and unswerving. In 1975 and 1976, she and other Hopi spiritual leaders such as David Monongye and Thomas Banyacya supported suits intended to challenge federal authority to implement policy on the say-so of the Hopi IRA government.[52]

The double standard of determining "equity" inherent to U.S. legal treatment of indigenous peoples also became increasingly apparent within the rationalizations through which the relocation act had been passed. The issue goes to the fact that, where the federal government or its non-Indian citizenry has been shown to have illegally acquired Indian land, the victims have never been allowed to recover their property. U.S. judicial doctrine has instead held that they are entitled only to "just compensation," in the form of money, and in an amount determined to be "fair" by those who stole the property in the first place.[53] No white population in North America has ever

been relocated in order to satisfy an indigenous land right. Attorney Richard Schifter framed the question plainly and succinctly before the Senate Interior Committee in September 1972:

> Could it be, may I ask, that where the settlers are white, we pay the original owners off in cash; but where the settlers are Indian, we find expulsion and removal an acceptable alternative? Can such a racially discriminatory approach be considered as meeting the constitutional requirement for due process?[54]

Congressman Sam Steiger made what appears to be the *de facto* governmental response when he said, "I would simply tell the gentleman that the distinction between that situation and this one is that in those instances we were dealing with non-Indians occupying and believing they have a right in the lands. Here we are dealing with two Indian tribes. That is the distinction."[55]

Under the circumstances, it had become obvious by 1977 that the sort of minimal negative social, economic and cultural impact upon relocatees so blithely called for under P.L. 93-531 was simply impossible. Again, there was no excuse for the tardy realization. Aside from an abundance of Diné testimony to the likely consequences of relocation which was entered during the congressional deliberation process, anthropologist David Aberle had reported on May 15, 1973 to House Subcommittee on Indian Affairs that the outcome would be socio-cultural disintegration among the target population:

> Remove the sheepherder to a place where he cannot raise stock, remove the herd, and you have removed the foundation on which the family is vested. Demoralization and social disorganization are the inevitable consequences, and the younger people, no longer beneficiaries of a stable home life, become just another addition to the problems of maladjustment and alienation in our society.[56]

Yet the relocation program moved forward.

Impact Upon the Diné

Aberle was hardly the only expert warning that the consequences of P.L. 93-531 would be dire. As early as 1963, sociologists such as Marc Fried had been articulating the high costs of imposed relocation upon various populations.[57] By 1973, anthropologists like Thayer Scudder had also published in-depth studies specifically focusing upon the consequences of forcibly relocating landbased indigenous peoples from rural to urban environments.[58] And, of

course, there were the predictions of the Diné themselves. Such information was coming, not only from the traditionals out on the land, but from younger, college educated Navajos.[39] As for the traditionals, they had never been less than unequivocal in their assessment. For instance, elder Katherine Smith, an elder from the Big Mountain area of the northern JUA, told senate investigators in 1972 that:

> I will never leave the land, this sacred place. The land is part of me, and will one day be part of the land. I could never leave. My people are here, and have been here forever. My sheep are here. All that has meaning is here. I live here and I will die here. That is the way it is, and the way it must be. Otherwise, the people will die, the sheep will die, the land will die. There would be no meaning to life if this happened.[40]

As the relocation program began to come alive, such warnings began to be borne out. The impact was exacerbated by the tactics used to convince the Diné to "voluntarily" sign up for relocation. High on the list of these was the impoundment of sheep. The day after Judge Walsh signed the order declaring the Simkin partition line official, Hopi Tribal Chairman Abbott Sekaquaptewa (who replaced Clarence Hamilton in that position during 1976) ordered a group of his rangers into the Hopi portion of the JUA to begin seizing every head of Diné livestock they could lay hands on. Sekaquaptewa had no legal authority to undertake such action,[41] but a special force of 40 SWAT-trained and equipped BIA police were immediately sent in to back him up.[42] This precipitated a crisis in which Walsh formally enjoined the Hopis from going ahead with their stock impoundment program.[43] Sekaquaptewa, seeming "almost eager for a shootout," defied the order, and demanded the government "get the army and some machine guns out here, because that's all the Navajos understand."[44]

Rather than arresting Sekaquaptewa for inciting violence and blatant contempt of court, BIA's operational director in the JUA, Bill Benjamin (Chippewa), attempted to placate him with a plan whereby the Bureau would buy up Diné sheep within the Hopi partition area at 150% of market rate. This, he argued, would remove many of the offending animals peacefully, while – in theory at least – provide the Diné with funds to underwrite their move to "their own side of the line." Under provisions of the law, Benjamin had five years in which to complete his stock reduction program; using the buy-out scheme, he was able to secure 67,000 of the estimated 120,000 sheep being herded by Diné of Hopi-partitioned land. At the end of the year, however, the BIA refused to allocate the monies promised to make good on Benjamin's "purchases." The people whose stock was at issue were, of course, left

"Sheep are life" to traditional Diné. (*Photo: Dan Budnik*)

destitute, while Benjamin was made to appear a liar, destroying the element of trust which the Diné had extended to him. As he himself put it at the time:

> Those people [the Diné] are under tremendous strain. They are facing the unknown of relocation, and as their stock is taken away they are losing a bank account and a way of life. Traditionally, their day was planned around the needs of the flock, and if they needed money they could sell a sheep or two. But as things are now, we can expect a lot of personal and family problems...All I know is that I can't deliver on a promise I made to people in a very difficult situation.[45]

The stock impoundment effort slowed after this, but has been continued at a steady, deliberate and – for the Diné – socially, economically and psychologically debilitating pace ever since. It has not, however, been the only coercive measure used. Judge Walsh's order making the Simkin line official also included an instruction renewing his earlier freeze on Diné construction within the Hopi partition area, other than with "a permit from the Hopi Tribe."[46] The Hopis, of course, have issued no such permits and have used their rangers to destroy any new structures which have appeared (as well as more than a few older ones). Even repair of existing structures has been attacked as a violation of the building freeze. This has caused a steady

deterioration in the living conditions of the targeted Diné, as well as a chronic anxiety about whether the very roofs of their hogans might not be simply ripped off from over their heads.[47] The situation has now lasted 13 years.

At the same time, those who bowed to the unrelenting pressure and accepted relocation were meeting a fate at least equally as harsh as that being visited upon those who refused. As of March 1984, not a single acre of rural land had been prepared to receive relocatees. For those approximately 30% of all targeted families who had allowed themselves to be moved into cities or towns, "even the Relocation Commission's statistics revealed a problem of tremendous proportions: almost 40% of those relocated to off-reservation communities no longer owned their government-provided house. In Flagstaff, Arizona, the community which received the largest number of relocatees, nearly half the 120 families who had moved there no longer owned their homes. When county and tribal legal services offices discovered that a disproportionate [number] of the houses had ended up in the hands of a few realtors, allegations of fraud began to surface. Lawsuits were filed by local attorneys; investigations were begun by the United States Attorney's Office, the Federal Bureau of Investigation, the Arizona Department of Real Estate, and the Relocation Commission; and the most in-depth review of the Relocation program which has ever been undertaken by a body of Congress was prepared."[48] A classic case of what was/is happening is that of Hosteen Nez.

> In 1978, Nez, an 82-year-old relocatee, moved to Flagstaff from Sand Springs. Within a year, Nez suffered a heart attack, could not pay his property taxes or utility bills, lost his $60,000 ranch-style home, and moved back to the reservation [where he also had no home, having relocated from his old one]. [49]

By the mid-'80s, relocatee reports of increased physical illness, stress and alcoholism, and family breakup were endemic.[50] At least one member of the relocation commission itself had publicly denounced the program as being "as bad as...the concentration camps in World War II," and then resigned his position.[51] Area editorial writers had begun to denounce the human consequences of P.L. 93-531 in the most severe terms imaginable:

> [I]f the federal government proceeds with its genocidal relocation of traditional Navajos to alien societies, [the problem] will grow a thousandfold and more...The fact that it is a problem manufactured in Washington does not ease the pain and suffering – nor does it still the anger that fills too many hearts.[52]

Use of the term "genocide" in this connection was by then not uncommon. And such language was neither rhetorical nor inaccurate. Thayer Scudder and others had already scientifically documented the reality of what

Diné Resistance: Demonstation in Phoenix, 1981 (*Photo: Lee Cannon*)

was being called "the deliberate, systematic, wilful destruction of a people."[73] At least two careful studies had concluded unequivocally that U.S. policy *vis à vis* the JUA Diné violated a broad range of international laws, including the United Nations' *1948 Convention on Punishment and Prevention of the Crime of Genocide*.[74] But still the government moved forward.

Diné Resistance

Resistance to extermination – whether physical or cultural – is a natural and predictable human response. In the case of the JUA Diné, it foreshadowed in a statement to Indian Commissioner Philleo Nash by Navajo tribal council member Carl Todacheenie. The statement was made in 1963, shortly after the *Healing v. Jones* (II) decision:

> The only way the Navajo people are going to move, we know, is they have to have another Bataan Death March. The United States government will have to do that...We're settled out there [in the JUA], and we're not going to advise our people to move, no matter who says. They probably got to chop off our heads. That's the only way we're going to move out of there.[75]

More than two decades later, on March 3, 1977, when Arizona Congressman Dennis DeConcini (who had replaced Sam Steiger in 1976) attended a

Hopi traditionalists Thomas Banyacya (left) and David Monongye express solidarity with gathering of Diné resisters, Big Mountain, Spring 1984 (*Photo: Pelican Lee*)

meeting of Diné at White Cone, in the southeastern Diné partition area, he heard exactly the same thing. "Livestock reduction means starvation to us," DeConcini was told by 84-year-old Emma Nelson. "Washington has taken our livestock without replacing it with any other way of making a living." Another area Diné, Chester Morris, was more graphic: "The enforcement of P.L. 93-531 means starvation, homelessness, mentally disturbed [*sic*], alcoholism, family dislocation, crime and even death for many." "This is very emotional," Miller Nez, a local resident, went on, "and at some point I think we're going to resist any further attempt by Washington to take away our only source of support. I think sooner or later there will be killing of individuals."[8]

The Diné were, to be sure, already resisting, and had been for 23 years, simply by their refusal to comply with the terms of *Healing v. Jones*. Resistance of the sort under discussion, however, may be said to have really begun on October 2, 1977, when a Diné elder named Pauline Whitesinger faced down a crew hired by the BIA to erect a barbed wire fence. When the crew began to

Resistance meeting at the AIM Survival Camp, Big Mountain, 1985 (*Photo: Steve McKay*)

construct a section of fence bisecting Whitesinger's sheep graze, she told them to stop. When they didn't, she drove her pickup truck straight at them. They left, but returned the next day and resumed work. This time, she chased them away by throwing handfuls of dirt into their faces. Whitesinger was shortly arrested on assorted charges, but later acquitted.[7]

Often during the following year and a half, fencing crews showed up for work in the morning only to find the wire a posts they'd laboriously installed the day before had been torn down during the night. During mid-summer 1979, a crew appeared on the line of elder Katherine Smith, only to find themselves staring into the muzzle of her .22 caliber rifle. She fired over their heads and, when they scattered, she began dismantling the fence before their eyes. Smith was arrested on serious charges, only to receive a directed verdict of acquittal from a judge responsive to her argument that she had been beside herself with rage in confronting a law she knew to be not only wrong, but immoral.[8]

At about the same time Smith was firing her rifle, the American Indian Movement (AIM) was conducting its Fifth International Indian Treaty Council (IITC) at the sacred site of Big Mountain in the Hopi partitioned portion of the northern JUA. Convened in that location at the request of the Diné elders, the council was intended as a means of garnering outside support for what the targeted population expected to be a bitter battle for survival. During the council, the elders prepared a statement which read in part:

> We do hereby declare total resistance to any effort or influence to be removed from our homes and ancestral lands. We further declare our right to live in peace with our Hopi neighbors.[9]

Traditional Hopi leaders David Monongye and Thomas Banyacya attended the council, extending unity and support from the *Kikmongwe* to the Big Mountain resistance. IITC pledged itself to take the situation of the JUA Diné before the United Nations.[80] Diné AIM leader Larry Anderson then announced his organization was establishing a permanent survival camp at the council site, located on the property of AIM member Bahe Kadenahe. Anderson also promised to establish a legal defense apparatus to support the Big Mountain effort as rapidly as possible. This was accomplished by securing the services of Boston attorney Lew Gurwitz to head up what became known as the Big Mountain Legal Defense/Offense Committee (BMLDOC). By 1982, BMLDOC, utilizing funds provided by the National Lawyers Guild (NLG), had opened a headquarters in Flagstaff, the most proximate town of any size to the JUA.[81]

Over the next two years, Gurwitz entered several suits in behalf of individual Diné people suffering under the impact of stock reduction, and began to assemble a legal staff composed primarily of student interns underwritten by the NLG.[82] He also began to organize an external support network for the Big Mountain resistance which at its peak evidenced active chapters in 26 states and several foreign countries.[83] On a related front, BMLDOC put together an independent commission to study the international legal implications of federal relocation policy in the JUA, and collaborated with organizations such as the Washington, D.C.-based Indian Law Resource Center in making presentations to the U.N. Working Group on Indigenous Populations.[84]

As this was going on, more direct forms of physical resistance were also continuing. For instance, in 1980, Bahe Kadenahe was arrested along with 20 others (dubbed the "Window Rock 21") during a confrontation with BIA police. Charged with several offenses, he was later acquitted on all counts. At about the same time, elder Alice Benally and three of her daughters confronted a fencing crew, were maced, arrested and each charged with eight federal crimes. They too were eventually acquitted on all counts. The spring of 1981 saw a large demonstration at the Keams Canyon BIA facility which caused Acting Commissioner of Indian Affairs Kenneth Payton to temporarily suspend livestock impoundment operations. In 1983, after livestock reduction had been resumed, Big Mountain elder Mae Tso was severely beaten while physically resisting impoundment of her horses. Arrested and jailed, she suffered two heart attacks while incarcerated. She was ultimately acquitted of having engaged in any criminal offense.[85]

Matters reached their peak in this regard during June 1986, in preparation for a federally-established date (July 7 of that year) when outright forced relocation was to be implemented. The scenario called for large units of heavily armed BIA police and U.S. marshals to move into the Hopi partition

Sign posted at entry to AIM Survival Camp, Big Mountain, June 1986 (*Photo: Cate Gilles*)

area, physically removing all Diné who had refused to relocate in response to less drastic and immediate forms of coercion. In the event, BMLDOC managed to bring some 2,000 outside supporters into the contested zone, AIM made it known that its contribution to defense of the area would likely be "other than pacifistic," and the government backed down from the specter of what Gurwitz described as "70-year-old Diné grandmothers publicly engaged in armed combat with the forces of the United States of America."[88]

Rather than suffering the international public relations debacle which would undoubtedly have accompanied a resort to open warfare with the Diné resistance, federal authorities opted to engage in a waiting game, utilizing the relentless pressure of stock reduction, fencing and the like to simply wear down the opposition. Their strategy also seems to have encompassed the likelihood that, absent the sort of head-on government/Indian collision implicit to the imposition of an absolute deadline, the attention of non-Indian supporters would be difficult or impossible to hold. The defense coalition BMLDOC had so carefully nurtured was thus virtually guaranteed

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to atrophy over a relatively short term of apparent government inactivity, affording authorities a much greater latitude of operational secrecy in which to proceed than they possessed in mid-1986.[27]

In 1988, Big Mountain defense attorney Lee Brooke Phillips, in collaboration with attorneys Roger Finzel and Bruce Ellison, filed a lawsuit – *Manybeads v. United States* – in an attempt to take the pressure off the Diné by blocking relocation on the basis of the policy's abridgement of first amendment guarantees of religious freedom.[28] Although it initially seemed promising, the suit was dismissed by U.S. District Judge Earl Carroll on October 20, 1989 because of the Supreme Court's adverse decision in the so-called "G-O Road Case" concerning the rights of indigenous people in northern California to specific geographic areas for spiritual reasons. At present, Phillips is engaged in appeals to have the *Manybeads* suit reinstated, but the outlook is not favorable.[29]

Resistance under these conditions adds up more than anything to a continuing refusal to leave the land. And so it is that by the summer of 1990, approximately 75% of the Diné originally targeted for relocation under P.L. 93-531 remain where they were at the outset, stubbornly replenishing their flocks despite ongoing impoundments, repairing hogans and corrals in defiance of the building freeze, and conducting periodic forays to dismantle sections of the hated partition line fence.[30] Although suffering the full range of predictable effects stemming from the government's 15-year sustained effort to push them quietly off their land, there is currently no indication they will alter their position or course of action.

Liberal Obfuscation

Almost from the moment that it became evident Diné resistance would be a serious reality, the government began a campaign to mask the implications of P.L. 93-531 behind a more liberal and "humanitarian" facade. The first overt attempt along this line occurred in July 1978 when Arizona's conservative senator, Barry Goldwater – a prime mover in the law's passage – responded to a challenge presented by Diné elders Roberta Blackgoat and Violet Ashke during the culmination of AIM's "Longest Walk" in Washington, D.C. the same month. At their invitation, he traveled to Big Mountain to meet with the resisters. Goldwater used the occasion to try and confuse the issue, asserting that the relocation act entailed no governmental policy "that says that [the Diné] have to move or what [they] have to do."[31] Even the establishment press responded negatively to such clumsy distortion.[32]

Finding bold-faced lying an ineffectual tactic, Goldwater quietly made it known that he would not oppose token gestures proposed by congressional

Senator Barry Goldwater lying to Diné resisters at Big Mountain, July 1978 (*Photo: Mark Lennihan*)

liberals to create the public appearance that relocation was less harsh in its implications than was actually the case. The main weight of this effort fell upon Dennis DeConcini, who had replaced Wayne Owens as an Arizona senator in 1976, and Congressman Morris Udall, who had already publicly sided with the Sekaquaptewas.[13] Both lawmakers tendered proposals to amend P.L. 93-531 which would provide for "life estates" allowing limited numbers of Diné elders to remain on 90 acre parcels within the Hopi partition area until they died. No provisions were made to allow these selected elders to retain the familial/community context which lent meaning to their lives, have access to sufficient grazing land to maintain their flocks, or to pass along their holdings to their heirs. In effect, they were simply granted the "right" to live out their lives in impoverished isolation. Not unreasonably, the Diné began in short order to refer to the scheme as an offering of "death estates."

Nonetheless, a combination of the DeConcini and Udall initiatives were passed as P.L. 96-305 in 1980.[14] Touted as having "corrected the worst of the problems inherent to P.L. 93-531," the new law immediately became a focus of resistance in its own right. It was generally viewed, as Diné activist Danny Blackgoat put it in 1985, as "a way to divide the unity of the people, setting up struggles between relatives and neighbors over who should receive an 'estate,' and causing those who were offered estates to abandon those who weren't. That way, the resistance would fall apart, and the government would

be able to do whatever it wanted." But, as Blackgoat went on to observe, "It didn't work. The people rejected the whole idea, and our struggle actually increased after the 1980 law was passed."[84]

As Diné resistance and outside support mounted with the approach of the government's relocation deadline, the liberals adopted a different strategy. Udall first engineered a February 25, 1986 memorandum of understanding whereby the relocation commission – which was by that point openly admitting it could not meet its goals – would essentially dissolve itself and pass over responsibility for relocation to the BIA. He then secured an agreement from both Ivan Sidney (who had replaced Abbott Sekaquaptewa as Hopi tribal chairman) and Indian Commissioner Ross Swimmer to forego forcible relocation, pending "further legislative remedy of the situation. He then teamed up with Arizona congressman (now senator) John McCain to introduce "compromise legislation," House Resolution 4281, which would have allowed an exchange of land between Diné and Hopi within the partitioned areas without disturbing the basic premises of P.L. 93-531 in any way at all.[85]

The Udall-McCain bill was already in the process of being rejected by the resistance – on the grounds that it accomplished nothing of substance – when Barry Goldwater began entering his own objections to the effect that it was time to stop "coddling" the resisters. H.R. 4281 thus died without being put to a vote. This provoked New Mexico Representative Bill Richardson to propose a bill (H.R. 4872) requiring a formal moratorium on forced relocation until the matter might be sorted out. Udall killed this initiative in his capacity as chair of the House Interior and Insular Affairs Committee.[86] An informal stasis was maintained until 1987, when California Senator Alan Cranston introduced an initiative (S. 2452) calling for an 18 month moratorium on relocation, pending "further study" and the devising of a new resolution, "to which all parties might agree." This effort continues in altered form as of mid-1990 – officially designated as S. 481 – and is now cosponsored by Illinois Senator Paul Simon and Colorado Senator Tim Wirth. A lower chamber version of the bill, H.R. 1235, is presently cosponsored by 20 members of congress.[87]

Meanwhile, with the help of Udall, McCain was able to push through a draft bill (S. 1236) which became P.L. 100-666 in 1989. The statute contains elements of the earlier, ineffectual, Udall-McCain draft land exchange legislation while requiring that the relocation commission be reactivated and that relocation go forward, to be completed by the end of 1993. At present, no new relocation commissioner has been named, although the search seems to be centering upon a former executive of the Peabody Coal Company.[88]

Peabody draglines digging their way toward Big Mountain, 1988 (*Photo: Zach Singer*)

The Present Situation

As this manuscript goes to press, the government of the United States has done absolutely nothing to end the process of Diné cultural destruction it began with the passage of P.L. 93-531 in 1974. There has been no discussion of repealing the offending statute. To the contrary, the federal government has steadfastly maintained the basic legitimacy of its policy in this regard, offering mere variations on the theme of relocation as "alternatives." The options offered amount, as Colorado AIM leader Glenn T. Morris has observed, to "sugar coated genocide."[108] The fact that the actual physical eviction of the Diné resistance has not been attempted seems to have been little more than a tactical decision, pursuit of a war of attrition rather than a blitzkrieg.

In early 1989, the Peabody Coal Company requested that the federal Office of Surface Mining (OSM) approve expansion of its mining activities on Black Mesa. Although Peabody had never obtained permits, required by law since 1985, to operate at its already existing mine sites, the OSM raised no issue with this new application. Instead, it referred the matter for "review" within the framework of an officially commissioned and supposedly objective environmental impact study released on June 2, 1989. The study is suspect on a number of grounds, not least of which is an assertion that post-extraction reclamation of the area to be strip-mined can be 100% effective. Such a claim is not supported by any known body of scientific literature, although it is customarily advanced by representatives of Peabody Coal. Other defects in the study include apparently inadequate assessments of the effects of water draw-down for purposes of increased slurry operations,

selenium accumulation, atmospheric pollution, and local social and cultural impacts. "Lack of available information" is typically cited as a reason for these deficiencies, despite the facts that the missing data are known to exist, and that a number of regional experts were never contacted for their opinions.[101]

Although the study reputedly took four years to complete, public response time was limited by the OSM to 60 days, thus severely limiting the type and quantity of countervailing information which might be submitted.[102] While it is true that expanded mining operations in the northern JUA have not yet commenced, all indications are that an official sanction for such activity has already been orchestrated. This in turn establishes the prospect that the question of Diné resistance in the contested area may ultimately be "resolved" through the expedient of simply digging the very ground from beneath the resisters' feet.

The Diné position remains unchanged. As Roberta Blackgoat, a 75-year-old Diné resistance leader, put it: "If they come and drag us all away from the land, it will destroy our way of life. That is genocide. If they leave me here, but take away my community, it is still genocide. If they wait until I die and then mine the land, the land will still be destroyed. If there is no land and no community, I have nothing to leave my grandchildren. If I accept this, there will be no Diné, there will be no land. That is why I will never accept it...I can never accept it. I will die fighting this law."[103] Beyond this, there seems nothing left to say.

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Notes

1. See Kelly, Lawrence, *Navajo Roundup*, Pruett Publishing Co., Boulder, CO, 1970. Also see Thompson, Gerald, *The Army and the Navajo: The Bosque Redondo Reservation Experiment, 1863-1868*, University of Arizona Press, Tucson, 1982. Also see Roessel, Ruth (ed.), *Navajo Stories of the Long Walk*, Navajo Community College Press, Tsaile, AZ, 1973.

2. Treaty of 1868, United States-Navajo Nation, 15 *Stat.* 667. For background on the "negotiations" going into this international agreement, see U.S. House of Representatives, *Executive Document 263*, 49th Congress, 1st Session, Washington, D.C., 1868. For further context on the treaty, see Iverson, Peter, *The Navajo*, University of New Mexico Press, Albuquerque, 1981.

3. For context, see Kluckhohn, Clyde, and Dorothea Leighton, *The Navajo*, Harvard University Press, Cambridge, MA, 1948. Also see Downs, James F., *The Navajo*

(Holt, Rinehart and Winston Publishers, New York, 1972), and Waters, Frank, *Book of the Hopi*, Viking Press, New York, 1963. Concerning Diné-Hopi intermarriage, see *The Tobacco Clan*, a pamphlet circulated by the Big Mountain Legal Defense/Offense Committee, Flagstaff, AZ, *circa* 1984.

4. The Executive Order was signed on December 16, 1882, demarcating an area 70 miles long by 55 miles wide, enclosing some 2,472,095 acres. It is estimated that approximately 600 Diné and 1,800 Hopis lived within the demarcated zone at the time the order went into effect. For general history, see Kammer, Jerry, *The Second Long Walk: The Navajo-Hopi Land Dispute*, University of New Mexico Press, Albuquerque, 1980. For legal history, see *Healing v. Jones* (II), 210 F. Supp. 125 (D. Ariz 1962). Also see *Hopi Tribe v. United States*, 31 Ind. Cl. Comm. 16 (1973) (Docket 196).

5. See U.S. Commission on Civil Rights, *The Navajo Nation: An American Colony*, Washington, D.C., September 1975. Also see Allan, R., "The Navajo Tribal Council: A Study of the American Indian Assimilation Process," unpublished 1983 report available from the *Arizona Law Review*.

6. The Indian Reorganization Act (IRA), 25 U.S.C.A. § 461, is also known as the "Wheeler-Howard Act," after its Senate and House sponsors, Senator Burton K. Wheeler and Congressman Edgar Howard. An in-depth analysis of the act may be found in Deloria, Vine Jr., and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty*, Pantheon Books, New York, 1984. Also see Haas, Theodore H., "The Indian Reorganization Act in Historical Perspective," in Lawrence H. Kelly (ed.), *Indian Affairs and the Indian Reorganization Act: The Twenty Year Record*, University of Arizona Press, Tucson, 1954.

7. LaFarge, Oliver, *Notes for Hopi Administrators*, U.S. Department of Interior, Bureau of Indian Affairs, Washington, D.C., 1936; quoted in Indian Law Resource Center, *Report to the Kikmongwe and Other Traditional Hopi Leaders on Docket 196 and Other Threats to Hopi Land and Sovereignty*, Washington, D.C., 1979, p. 49.

8. See La Farge, Oliver, *Running Narrative of the Organization of the Hopi Tribe of Indians*, an unpublished study in the Oliver La Farge Collection, University of Texas at Austin. Also see Lummis, Charles, *Bullying the Hopi* (Prescott College Press, Prescott, AZ, 1968), and Nash, Jay B., Oliver La Farge and W. Carson Ryan, *New Day for the Indians: A Survey of the Workings of the Indian Reorganization Act* (Academy Press, New York, 1938).

9. See Thompson, Laura, *A Culture in Crisis: A Study of the Hopi Indians*, Harper and Brothers Publishers, New York, 1950. Also see the relevant chapters in Matthiessen, Peter, *Indian Country*, Viking Press, New York, 1984.

10. See Kammer, *op. cit.*, p. 78. Further context may be obtained from Sekaquaptewa, Helen, and Louise Udall, *Me and Mine* (University of Arizona Press, Tucson, 1969), and Clemmer, Richard O., *Continuities of Hopi Culture Change* (Acoma Books, Ramona, CA, 1978).

11. Grazing District 6 has an interesting history. It was initially established in 1936 as at the request of the Mormon segment of Hopi society in exchange for their participation in the federally-desired reorganization of Hopi governance. At the time, it was provisionally constituted at 499,248 acres, pending the results of a U.S. Forest Service study which would fix its "permanent" acreage, based on actual Hopi "need"

(210 Fed. Supp. 125 (1962)). In November 1939, the "exclusive Hopi use and occupancy area" was expanded to 520,727 acres, upon the recommendation of Forest Service official C.E. Rachford. This was followed, in 1941, with a plan proposed by Indian Commissioner John Collier, responding to Mormon Hopi demands, to expand the grazing district to 528,823 acres. The Sekaquaptewas rejected the Collier proposal in council, arguing that their continued participation in IRA governance entitled them to more. A second Forest Service study was then commissioned, leading to a recommendation by Forester Willard Centerwall that "final boundaries" be drawn which encompassed what he computed as being 631,194 acres. This was accepted by the Sekaquaptewa faction. A 1965 BIA survey disclosed, however, that Centerwall had noticeably miscalculated; the real acreage encumbered within the final version of Grazing District 6 is actually 650,013. See Kammer, *op. cit.*, pp. 40-1.

12. Boyden was first retained by the Hopi IRA government in 1951, to file a claim for preeminence of Hopi mineral rights over the entirety of the 1882 Executive Order Area. Tellingly, this was done over the direct objections of the traditional *Kikmongwe*, who had delivered a formal proclamation in 1948 opposing any and all mineral development by their nation. The precipitating factor underlying the traditional position was the earlier issuance of a report by BIA Solicitor General Felix S. Cohen ("Ownership of Mineral Estate in Hopi Executive Order Reservation," U.S. Department of Interior, Bureau of Indian Affairs, Washington, D.C., 1946). Very interesting is the fact that Boyden had gone before the Navajo Tribal Council almost as soon as the Cohen report was released, attempting to market his services in securing its interests *against* the Hopis. In late 1951, the *Kikmongwe* attempted to enter a suit with the Indian Claims Commission which would have blocked Boyden's actions "in their behalf" on the minerals front. The ICC dismissed this suit out of hand in 1955, insofar as the *Kikmongwe* were not the "federally recognized government" representing the Hopi Nation. See Parlow, Anita, *Cry, Sacred Land: Big Mountain, U.S.A.*, Christic Institute, Washington, D.C., 1988, pp. 198-9.

13. The primary initiative towards this end was Boyden's authoring of P.L. 85-547, passed by the U.S. Congress in 1958. The statute authorized litigation to resolve conflicting land claims within the 1882 Executive Order Area, once and for all. This allowed Boyden to file what is called the *Healing v. Jones* (I) suit (174 F. Supp. 211 [D. Ariz. 1959]), by which he sought to obtain clear title to the entire 1882 parcel for his Mormon Hopi clients. The results of this foray were inconclusive. Hence, Boyden launched the earlier-cited *Healing v. Jones* (II) suit. This gambit failed in 1962, when a special three-judge panel from the U.S. District Court ruled that equal rights applied to both Hopis and Navajos outside of Grazing District 6; this mutually-held territory was proclaimed a "Navajo-Hopi Joint Use Area" (JUA). On appeal, Circuit Judge Frederick Hamley upheld the lower court, observing that – absent a treaty – Hopi held "no special interest" in the disputed area, and that any land rights it might actually possess were subject entirely to the federal "plenary power authority" accruing from the 1903 *Lonewolf v. Hitchcock* decision (187 U.S. 553). Hamley clarified his position as being that both Navajos and Hopis were "no more than tenants" in the Executive Order Area (174 F. Supp. 216). In 1963, the U.S. Supreme Court upheld Hamley's interpretation of the case. For further information, see Schifter, Richard, and Rick

West, *"Healing v. Jones*: Mandate for Another Trail of Tears?" *North Dakota Law Review*, No. 73, 1974. Whitson, Hollis, "A Policy Review of the Federal Government's Relocation of Navajo Indians Under P.L. 93-531 and P.L. 96-305," *Arizona Law Review*, Vol. 27, No. 2, 1985.

14. For example, in 1955, the BIA and University of Arizona College of Mines completed a $500,000 joint study of mineral resources on both Diné and Hopi lands, suggesting that extensive coal stripping and concomitant electrical power generation were likely in "the foreseeable future." The three-volume report specifically highlighted Black Mesa, in the northern portion of the JUA as holding up to 21 billion tons of low sulphur coal beneath an almost nonexistent overburden of soil. In 1956, an independent study undertaken by geologist G. Kiersch for the Arizona Bureau of Mines (*Metalliferous Minerals and Mineral Fuels, Navajo-Hopi Indian Reservations*) estimated the Black Mesa deposits at 19 billion tons. By either assessment, the area was seen to hold a rich potential for strip mining.

15. There were actually a total of sixteen energy corporations involved at this stage; see *Petroleum Today*, Winter 1965.

16. Oil exploration leases for Grazing District 6 were let by sealed bid during September and October of 1964, generating $984,256 for the top 56 parcels, $2.2 million overall. John Boyden's bill for setting up the leasing procedure was $780,000. The Sekaquaptewas saw to it that he received even more: a total of $1 million in "fees and bonuses" for "services rendered." Ironically, it turned out there was no oil at all under Grazing District 6. See Kammer, *op. cit.*, pp. 77-8.

17. As a matter of record, John Boyden was a legal representative of Peabody Coal's attempted merger with Kennecott Copper during the very period he was negotiating Peabody's Black Mesa lease in behalf of the Hopi IRA government. The 35-year lease was signed in 1966, giving Peabody access to 58,000 acres sitting atop what the Arizona Bureau of Mines estimated in 1970 was 21 billion tons of readily accessible low sulphur coal. Peabody then opened the Kayenta Mine on the northern edge of the JUA, a location directly impacting only Diné, no Hopis. The agreement allowed the corporation to draw off desert ground water in order to slurry coal 273 miles, to Southern California Edison's Mohave Generating Station, near Bullhead, Nevada. The Navajo Nation was persuaded by Congressman Aspinall, chair of the House Interior Committee and a personal friend of Boyden, to give up rights to some 31,400 acre feet per year in upper Colorado River water – as "compensation" for water used in the Peabody slurry operation – while simultaneously providing right of way for Arizona's Salt River Project to construct a 78 mile rail line from the mine site to its Navajo Power Plant, near the town of Page. Udall, whose job as Interior Secretary it was to protect *all* Indian interests in the affair, saw to it instead that the complex of agreements were quickly and quietly approved; his motivation may be found in the fact that the Interior Department's Bureau of Reclamation owned a 25% interest in the Navajo Power Plant, a matter which figured into Interior's plan to divert some 178,000 acre feet of the Diné share of Colorado River water to its Central Arizona Project, meeting the needs of the state's non-Indian population. All in all, as an editorial writer in the Gallup (New Mexico) Independent was to observe on May 14, 1974, the whole thing was "a miserable deal for the Navajo Tribe." The Sekaquaptewas were, of course, delighted with the transaction and reputedly paid Boyden some $3.5 million

from the Hopi share of the Peabody royalties over the years, for his skill in "finesing" the situation to their advantage. Meanwhile, the Mormon Church, of which both they and their attorney were members, and for which Boyden was also acting as an attorney, owned an estimated 8% of Peabody's stock (and a substantial block of Kennecott stock, as well) in 1965. The value of and revenue from the church's Peabody holding nearly doubled during the three years following Boyden's successful participation in the Black Mesa lease initiative. For further information, see Wiley, Peter, and Robert Gottlieb, *Empires in the Sun: The Rise of the New American West*, G.P. Putnam's Sons, New York, 1982. Also see Josephy, Alvin, "Murder of the Southwest," *Audubon Magazine*, July 1971.

18. The suit was *Hamilton v. Nakai* (453 F.2d 152 (9th Cir. 1972), *cert. denied*, 406 U.S. 945), in which Boyden introduced a 1964 BIA range use study indicating that the maximum carrying capacity of the JUA was 22, 036 "sheep units." Under provision of the "equal entitlement" stipulations of *Healing v. Jones* (II), he argued, the Diné were entitled to graze the maximal equivalent of 11, 018 sheep units in the JUA. He then introduced a BIA stock enumeration showing that some 1,150 traditional Diné families were grazing approximately 63,000 head of sheep and goats, 8,000 cattle, and 5,000 horses – the equivalent of 120,000 sheep units – a number the court was "compelled" to order reduced by about 90%. U.S. District Judge James Walsh concurred and, for reasons which are unclear, established a "cap" on Diné grazing rights even lower than 50% of carrying capacity: a maximum of 8,139 sheep units.

19. These suits include *Hamilton v. McDonald* (503 F.2d 1138 [9th Cir. 1974]), *Sekaquaptewa v. McDonald* (544 F. 2d. 396 [9th Cir. 1976]) and *Sidney v. Zah* (718 F.2d 1453 [9th Cir. 1983]). For further information, see Lapham, Neil, "Hopi Tribal Council: Stewardship or Fraud?" *Clear Creek Journal*, n.d.; available as a pamplet from the Big Mountain Legal Office, Flagstaff, AZ.

20. WEST Associates is a consortium of 23 regional utility companies which banded together with the federal Bureau of Reclamation in 1964 to advance a unified strategy for energy development and profit-making in the Southwest. Members include Arizona Public Service Company, Central Arizona Project, El Paso (TX) Electric, El Paso Natural Gas, Public Service of New Mexico, Southern California Edison, Tucson (AZ) Gas and Electric, the Salt River (AZ) Project, Texas Eastern Transmission Company, Los Angeles (CA) Water and Power, San Diego (CA) Gas and Electric, Nevada Power Company, Utah Power and Light, Public Service Company of Colorado, Pacific Gas & Electric. The WEST group is closely interlocked with the so-called "Six Companies" which have, since the 1930s, dominated dam construction, mining and other major development undertakings in the western U.S.; these include Bechtel, Kaiser, Utah International, Utah Construction and Mining, MacDonald-Kahn, and Morrison -Knudson. And, of course, the ripples go much further. In 1977, for example, Bechtel was a key player in a corporate consortium – including Newmont Mining, Williams Company, Boeing, Fluor, and the Equitable Life Insurance Company – which bought Peabody Coal after John Boyden's 1966 attempt to effect a merger between Peabody and Kennecott Copper was blocked by congress on anti-trust grounds. In any event, by the late 1960s, WEST had developed what it called "The Grand Plan" for rearranging the entirety of the Southwest into a "power grid"

involving wholesale coal stripping, dozens of huge slurry-fed coal-fired generating plants, a complex of new dams (including those such as Glen Canyon and Echo Canyon, which have in fact been built) for hydroelectric generation purposes, several nuclear reactors adjoining uranium mining/milling sites, and a fabric of high-voltage transmission lines girdling the entire region. Given the fact that infrastructural development costs were designed to be largely underwritten by tax dollars, the potential profitability of the plan for WEST members and affiliated corporations are absolutely astronomical over the long term. See Wiley and Gottlieb, *op. cit.*

21. For further information on the initial draft bill, see Thompson, Gary L., *The American Indian Law Journal*, No. 397, 1975. Also see Tehan, Kevin, "Of Indians, Land and the Federal Government," *Arizona State Law Journal*, No. 176, 1976.

22. Several such studies are alluded to in Ralph Nader Congress Project, *The Environmental Committees*, Grossman Publishers, New York, 1975. These should be understood in the context of the 1970 Arizona Bureau of Mines Bulletin No. 182 (*Coal, Oil, Natural Gas, Helium and Uranium in Arizona*), which articulated the range of incentives available for massive "energy development" programs in the area. For contextual information, see Churchill, Ward, "Letter From Big Mountain," *Dollars and Sense*, December 1985.

23. The senate did not vote the idea down. Rather, it set out to stall any decision it might make until after the 1972 elections. This was accomplished by the House scheduling hearings on the relocation issue in Winslow, Arizona See U.S. Congress, Senate, Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, *Authorizing Partition of Surface Rights of Navajo-Hopi Land: Hearings on H.R. 11128* (hereinafter referred to as *Authorization Hearings*), 92d Cong., 2d Sess., Washington, D.C., September 14-15, 1972.

24. McGovern wrote in a letter to Navajo Tribal Chairman Peter McDonald that if "there has been no satisfactory agreement reached [between the Hopis and Diné] before next January [1973], I will propose comprehensive new legislation to resolve the problem in such a way that no family is needlessly removed from its home land" (quoted in the *Gallup Independent*, August 3, 1972). On Goldwater, see Kammer, *op. cit.*, pp. 97-8.

25. Panitch, Mark, "Whose Home on the Range? Coal Fuels Indian Dispute," *Washington Post*, July 21, 1974. It is worth noting that, before going freelance, Panitch had worked as a reporter for the *Arizona Star* in Tucson, covering the land dispute. In this capacity, he had been repeatedly conned into reporting false or distorted information by the Evans PR effort. His analysis of what happened thus offers a significant degree of first-hand authenticity and credibility.

26. *Ibid.* For additional information, see Conason, Joe, "Homeless on the Range: Greed, Religion and the Hopi-Navajo Land Dispute," *Village Voice*, July 29, 1986.

27. As Kammer (*op. cit.*) observes on p. 92, "A particularly nasty incident began when Randolph ordered a ninety-seven-year-old Navajo named Tsinijinnie Yazzie to get off his horse and submit to arrest for trespassing with his sheep. Yazzie did not understand English and remained mounted, so Randolph jerked him off his horse, injuring him seriously. Randolph [then] jailed Yazzie on charges of trespassing and resisting arrest."

28. See Panitch's article on the incident in the *Arizona Star*, March 26, 1972.

29. *Authorizing Partition of Surface Rights of Navajo-Hopi Land*, *op. cit.*, p. 23. Perhaps ironically, Navajo Tribal Chairman McDonald played directly into his opponents' script by announcing that unless federal authorities acted to curb the Sekaquaptewas' tactics, the Diné would "get their fill of this and take things into their own hands" (*Arizona Sun*, March 1, 1972).

30. Quoted in Kammer, *op. cit.*, p. 105.

31. Fannin went on record as having cosponsored the draconian idea, not only to "avoid violence," but because Diné overgrazing was "killing" the JUA (*Navajo Times*, September 27, 1973). That this was a rather interesting concern for a lawmaker whose professed objective was to see the entire area strip mined and depleted of ground water went unremarked at the time.

32. The Lujan language accrues from a "dear colleagues" letter he disseminated to congress on March 16, 1974. In the alternative, Lujan had cosponsored, with Arizona Congressman John Conlan, a 1973 proposal that the Diné should be allowed to purchase JUA land from the Hopi, or that congress might appropriate monies for this purpose. These funds might then be used for whatever purpose the Hopis chose, including acquisition of land south of Grazing District 6, upon which no Diné lived, but under which there was no coal. Mineral rights within the JUA would continue to be shared by both peoples. The idea was that such compensation would serve to satisfy both the "equal interest" provisions of the *Healing v. Jones* (II) decision and elementary justice for the Hopis without committing the U.S. to engage in human rights violations against the Diné. New Mexico Senator Joseph Montoya carried a version of the Lujan/Conlan initiative into the senate. It is a testament to the extent to which the "land dispute" was/is really about mining that the enlightened approach offered by the Lujan/Conlan initiative met with vociferous resistance from the entirety of the Boyden/Sekaquaptewa/Goldwater/Steiger group, as well as WEST Associate lobbyists. The only responsive party to the proposition turns out to have been the McDonald administration at Navajo, which had been formally offering to buy out Hopi surface interests in the JUA since 1970.

33. The lopsidedness of the House vote is partially accounted for by the fact that influential Arizona Congressman Morris "Moe" Udall, brother of former Interior Secretary Stuart Udall, withdrew his opposition to H.R. 10337. He did so, by his own account, at the specific request of Helen Sekaquaptewa, a family friend and fellow Mormon. Udall's articulated position had previously been quite similar to that of Lujan, Conlan, and Montoya (*Congressional Record*, May 29, 1974, p. H4517).

34. *Sekaquaptewa v. McDonald*, *supra*; it is noted that McDonald was assessed a penalty of $250 per day for each day "excess" stock remained within the JUA.

35. A good portion of the credit for this atypical situation seems due to the effective and sustained lobbying of the Interior Department's Assistant Secretary for Land Management Harrison Loesch, an ardent advocate of mineral development on "public lands" and early supporter of the Steiger draft legislation. It is instructive that less than a year and a half after P.L. 93-531 was passed, Loesch was named vice president of Peabody Coal.

36. Kammer, *op. cit.*, pp. 128-9.

37. 88 *Stat.* 1714 (1974), otherwise known as the "Navajo-Hopi Settlement Act."

38. On this point, see Whitson, *op. cit.*, pp. 379-80.

39. The litigation provision accrued from an effort by Goldwater, *et al.* to simply assign ownership of 250,000 acres surrounding Moenkopi to the Hopis. An amendment introduced jointly by South Dakota Senator Abourezk and New Mexico Senator Montoya narrowly averted this outcome, by a vote of 37-35, by authorizing a court determination instead.

40. This Boyden/Evans myth was still being repeated as late as the beginning of 1977 by federal mediator William Simkin, charged with establishing the exact placement of the partition line by Judge Walsh. Simkin fixed the number of Diné to be relocated under his plan at 3,495. See *Navajo Times*, January 24, 1977.

41. The 1977 Simkin partition line is virtually identical to that originally proposed by Sam Steiger in 1971. The Steiger line had been drawn by John Boyden, in consultation with Peabody Coal. See Kammer, *op. cit.*, p. 134.

42. Navajo-Hopi Indian Relocation Commission (NHIRC), *1981 Report and Plan*, Flagstaff, AZ, April 1981.

43. This figure is advanced by Whitson (*op. cit.*, p. 372), using the NHIRC *Statistical Program Report for April 1985* (Flagstaff, AZ, May 3, 1985): The commission found that 774 Diné families had been certified and relocated from the Hopi partition zone by that point, while 1,555 families had been certified but not yet relocated. Another 1,707 Diné families had refused both certification and relocation. Using the conventional commission multiplier of 4.5 persons per "family unit," Whitson projected a "conservative estimate of between 10,480 and 17,478 persons, 3,483 of whom had been relocated by May 1985."

44. NHIRC, *1981 Report and Plan*, *op. cit.*

45. U.S. Department of Interior Surveys and Investigations Staff, *A Report to the Committee on Appropriations, U.S. House of Representatives, on the Navajo and Hopi Relocation Commission* (hereinafter referred to as *Surveys and Investigations Report*), Washington, D.C., January 22, 1985, p. 12.

46. *Ibid.*; testimony Relocation Commission Chairman Ralph Watkins, p. 6.

47. See U.S. Congress, *Senate, Relocation of Certain Hopi and Navajo Indians*, 96th Cong., 1st Sess., Washington, D.C., May 15, 1979.

48. The problem began in July 1975, when Navajo Chairman McDonald announced his government's intent to purchase the full 250,000 acres in BLM replacement lands in House Rock Valley, an area known as the "Arizona Strip" north of the Colorado River. The idea was met first with furious resistance by non-Indian "environmentalist" and "sporting" organizations such as the Arizona Wildlife Federation and the Save the Arizona Strip Committee (which advocated abolishing Indian reservations altogether). Next, it was discovered that a dozen Mormon families held ranching interests in the valley, and that brought Arizona's Mormon Congressman Moe Udall into the fray. In 1979, Udall introduced legislation, ultimately incorporated into P.L. 96-305, the 1980 amendment to P.L. 93-531, which placed Hard Rock Valley out-of-bounds for purposes of Diné acquisition. The next selection was the 35,000 acre Paragon Ranch in New Mexico, apparently chosen by the administration of Navajo Chairman Peterson Zah for its energy development potential rather than as a viable relocation site. In 1982, Interior Secretary James Watt blocked this initiative by

withdrawing the ranch from public domain, thereby making it unavailable for acquisition (47 *Fed. Reg.* 9290); Zah filed what was to prove to be an unsuccessful suit, seeking to compel the land transfer (*Zah v. Clark*, Civ. No. 83-1753 BB [D. N.M., filed Nov, 27, 1983]). Meanwhile, in early 1983, the Navajo government indicated it had selected 317,000 acres of public and private lands in western New Mexico, contiguous with the eastern border of the Navajo Nation. The plan met with such fierce reaction from local ranchers that it was soon abandoned (*Surveys and Investigations Report*, *op. cit.*, p. 24). On June 24, 1983, Zah announced the selection had been switched to five parcels in Arizona (*Navajo Times*, June 29, 1983). By May of 1985, only the Walker Ranch, a 50,000 acre tract, had actually been acquired. There were/are serious problems with water availability, and the ability of the land to sustain grazing was/is subject to serious question ("Water Rights become Issue in Acquiring Land for Tribe," *Arizona Daily Sun*, April 7, 1985). Such surface water as is available comes mainly from the Rio Puerco, heavily contaminated by the massive July 1979 United Nuclear Corporation Churchrock uranium spill 51 miles upstream at Sanders, AZ (see "Native America: The Political Economy of Radioactive Colonization," in this volume; also see Mann, L.J., and E.A. Nemecek, "Geohydrology and Water Use in Southern Apache County," *Arizona Department of Water Resources Bulletin I*, January 1983). Nonetheless, the first relocatees were moved onto this land in 1987 (Parlow, *op. cit.*, p. 202). As of 1990, there has been no improvement to the situation.

49. Quoted in the *Arizona Republic*, February 17, 1977.

50. Quoted in the *Arizona Star*, August 13, 1975.

51. Morrall was quoted in the *Arizona Daily Sun* (July 9, 1975) as saying, "[The Indians'] future lies in forgetting their "Separate Nation" status and become [*sic*] dues paying Americans like the rest of us."

52. *Lomayatewa v. Hathaway*, 52 F.2d 1324, 1327 (9th Cir. 1975), *cert. denied*, and *Suskena v. Kleppe*, 425 U.S. 903 (1976).

53. Examples of this principle are legion. As illustration, see the U.S. Supreme Court's "resolution" of the Black Hills Land Claim, 448 U.S. 907 (1982).

54. Schifter's query appears in *Authorization Hearings*, *op. cit.*, p. 208. It is possible the Senate Committee might have been swayed by the question. Such logic was, however, more than offset by the efficient and persistent lobbying of the committee's staff director, Jerry Verkler, who appears to have been, among other things, feeding inside information on the committee deliberations directly to Evans and Associates. Shortly after P.L. 93-531 was safely passed in 1974, Verkler left government service. In January 1975, he was named manager of the Washington, D.C. office of Texas Eastern Transmission Company, one of the WEST Associates consortium. By 1980, he had been promoted to fill a position as the corporation's vice president for government affairs. See Kammer, *op. cit.*, pp. 135-6.

55. Steiger's statement appears in the transcript of a meeting of the House Subcommittee on Indian Affairs, November 2, 1973, lodged in the committee files of the National Archives, Washington, D.C., at p. 127.

56. U.S. Congress, House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, *Relocation of Certain Hopi and Navajo Indians*, 92d Cong., 2d Sess., Washington, D.C., April 17-18, 1972, p. 35.

57. See, for example, Fried, Marc, "Grieving for a Lost Home," in L.J. Dunn (ed.), *The Urban Condition*, Basic Books, New York, 1963, pp. 151-71.

58. Scudder, Thayer, "The Human Ecology of Big Projects: River Basin Development on Local Populations," *Annual Review of Anthropology*, No. 2, 1973, pp. 45-61.

59, For example, see Gilbert, Betty Beetso, "Navajo-Hopi Land Dispute: Impact of Forced Relocation on Navajo Families," unpublished Master of Social Work thesis, Arizona State University, Tempe, 1977.

60. Smith's statement was made to an aid to Massachusetts Senator Ted Kennedy, Wendy Moskop, during a fact-finding trip to the JUA in 1974. Quoted in a flyer distributed by the Big Mountain Legal Defense/Offense Committee, Flagstaff, AZ, *circa* 1982.

61. Walsh's February 10, 1977 order did provide for both Hopi and Navajo jurisdiction on their respective sides of the partition line. However, it also specifically stated that livestock impoundment might proceed only under supervision of the secretary of the interior, who was charged with assuring "the civil rights of persons within the area are not obstructed" in the process. Sekaquaptewa's approach simply discarded Diné civil rights as an irrelevancy.

62. According to Kammer (*op. cit.*, p. 157), "[BIA Phoenix Area Office Director John] Artichoker had the police supplied with enough arms to repulse a tank assault. Weapons flow in from a special BIA arsenal in Utah included grenade launchers and automatic rifles."

63. Sekaquaptewa is quoted in the *Gallup Independent* (March 9, 1977) as saying, regardless of the judge's view, his rangers couldn't have an ordinance around without enforcing it."

64. The "eager for a shootout" description comes from *Ibid*. Abbot Sekaquaptewa is quoted from the *Gallup Independent*, March 18, 1977.

65. The details of Benjamin's plan, and quotation of his remarks, are taken from Kammer, *op. cit.*, p. 158. For analysis of the impact of the compulsory stock reduction program upon the targeted Diné, see Wood, John J., *Sheep is Life: An Assessment of Livestock Reduction in the Former Navajo-Hopi Joint Use Area*, Department of Anthropology Monographs, Northern Arizona University, Flagstaff, 1982.

66. The actual order is unpublished. It is quoted in part, however, in *Sekaquaptewa v. McDonald* (II), *op. cit.*, and *Sidney v. Zah*, *op. cit.*

67. See Whitson, *op. cit.*, pp. 404-6, for details on the effects of the building freeze.

68. *Ibid.*, p. 389. Whitson draws upon several sources in advancing her claims: Memorandum, "Relocatees Sale and Nonownership of Their Replacement Homes," David Shaw (NHIRC staff) to Steve Goodrich (NHIRC executive director); NHIRC *Report and Plan*, June 1983; *Surveys and Investigations Report*; Schroeder, James, "U.S. Probing Fraud Claims in Relocation of Navajos," *Arizona Republic*, March 7, 1984; *Monroe v. High Country Homes*, Civ. No. 84-189 PCT CLH (D. Ariz, filed Feb. 9, 1984).

69. *Ibid.*, p. 388.

70. See Scudder, Thayer, "expected Impacts of Compulsory Relocation of Navajos with Special Emphasis on Relocation from the Former Joint Use Area Required by P.L. 93-531," unpublished report, March 1979.

71. "Federal Commissioner says Relocation is like Nazi concentration camps," *Navajo Times*, May 12, 1982.

72. See Scudder, Thayer, with the assistance of David F. Aberle, Kenneth Begishe, Elizabeth Colson, Clark Etsitty, Jennie Joe, Jerry Kammer, Mary E.D. Scudder, Jeffrey Serena, Betty Beetso Gilbert Tippeconnic, Roy Walters, and John Williamson, *No Place To Go: Effects of Compulsory Relocation on Navajos, Institute* for the Study of Human Issues, Philadelphia, 1982.

74. See Churchill, Ward, "JUA/Big Mountain: Examination and Analysis of U.S. Policy Within the Navajo-Hopi Joint Use Area Under Provisions of International Law," *Akwesasne Notes*, Vol. 17, Nos. 3-4, May-August 1985. Also see Hawley, Lucy, Todd Howland, Ved P. Nanda, Judith Rhedin, and Sandra Shwader, *Denver Journal of International Law and Policy*, No. 15, 1987.

75. Todacheenie is quoted in Kammer, *op. cit.*, p. 79.

76. All quotes appear in the *Gallup Independent*, May 5, 1977.

77. See Kammer, *op. cit.*, pp. 1-2; Parlow, *op. cit.*, p. 200.

78. See Kammer, *op. cit.*, pp. 209-10; Parlow, *op. cit.*, p. 201.

79. Quoted in Parlow, *op. cit.*, p. 201. For further information, see Lee, Pelican, *Navajos Resist Forced Relocation: Big Mountain and Joint Use Area Communities Fight Removal*, self-published pamphlet, 1985; available through the Big Mountain Legal Office, Flagstaff, AZ.

80. This effort was maintained until 1984, at which point AIM fragmented and IITC virtually collapsed due to the insistence of some elements of the leadership of each organization to support Sandinistas rather than Indians in Nicaragua. Strange as this may seem, IITC mounted what might be called a "flying tribunal," sending it around the country to purge "unreliable individuals" guilty of expressing an "impure political line" by demanding rights of genuine self-determination for the Miskito, Sumu and Rama peoples of Nicaragua's Atlantic Coast region. Among those discarded was Gurwitz (in late 1986), who had served as the hub of the BMLDOC operation. The national and international support networks he had built up eroded very quickly, leaving the Big Mountain resistance with only a small – and relatively ineffectual – portion of the organized external support base it had once enjoyed. As for IITC, at last count, it was down to a staff of three operating from an office in San Francisco. While no longer a functional entity, it is, to be sure, "ideologically pure."

81. Anderson contacted Gurwitz during a National Lawyers Guild conference in Santa Fe, New Mexico during the spring of 1982. Gurwitz responded immediately, opening the Flagstaff office during the fall of the same year.

82. Perhaps most notable among the interns was Lee Brooke Phillips, who ultimately succeeded Gurwitz as head of the legal defense effort. BMLDOC was redesignated as the "Big Mountain Legal Office" (BMLO) in 1987.

83. Parlow, *op. cit.*, p. 117. The foreign countries at issue included Switzerland, West Germany, Austria, Italy, Canada, Great Britain and Japan.

84. The Indian Law Resource Center intervention was presented to the Working Group by staff attorney Joe Ryan on August 31, 1981. The independent commission, composed of Joan Price, Loughrienne Nightgoose, Omali Yeshitela and Ward Churchill, was first convened during the annual Big Mountain Survival Gathering, April 19-22, 1984. Its collective findings were presented to the elders over the following year.

85. For further information on these and other aspects of the physical resistance,

see Parlow, *op. cit.*, esp. pp. 115-151 and 201-2. Also see Matthiessen, Peter, "Forced Relocation at Big Mountain," *Cultural Survival Quarterly*, Vol. 12, No. 3, 1988.

86. The quote is taken from a speech made by Gurwitz at the University of Colorado/Colorado Springs, February 17, 1986.

87. The federal judgement seems to have been quite sound in this regard, as should be apparent from the events described in note 80, above. At present, organized support for the Big Mountain resistance has fallen to less than 10% of 1986 levels, and continues to decline. As of late 1989, the BMLO facility in Flagstaff, established by Gurwitz in 1982, had to be closed for lack of financial support.

88. The *Manybeads* suit was based in large part upon initially successful litigation of the Yellowthunder case (*United States v. Means, et al.*, Docket No. Civ. 81-5131, Dist. S.D., Dec. 9, 1985), in which attorneys Ellison, Finzel and Larry Leventhal argued that the entire Black Hills region is of spiritual significance to the Lakota. The same principle was advanced in behalf of the Diné resistance with regard to the Big Mountain area. However, the favorable decision reached by the U.S. District Court in Yellowthunder was overturned by the 8th Circuit Court of Appeals in the wake of the Supreme Court's G-O Road Decision. This in turn led to the dismissal of *Manybeads*.

89. Shortly after the *Manybeads* suit was entered, a second suit – *Attakai v. United States* – was filed, contending that specific sites within the Hopi partition area of the JUA are of particular spiritual significance to the Diné. This case remains active, although the only positive effect it has generated as of the summer of 1990 has been a ruling by Judge Carroll that the federal government and/or Hopi tribal council are required to provide seven days prior notification to both the Big Mountain Legal Office and Navajo tribal council of the "development" of such designated sites. In principle, this is to allow the Diné an opportunity to present information as to why targeted sites should not be physically altered. Rather obviously, however, the time-period involved is too short to allow for effective response. For further information, see Diamond, Phil, "Big Mountain Update," *Akwesasne Notes*, Vol. 21, No. 6, Mid-winter 1989-90. Concerning the G-O Road decision, see the essay on this topic by Glenn T. Morris in the first volume of *Critical Issues in Native North America*.

90. During the spring of 1990, the Big Mountain Legal Office estimated that as many as 9,000 of the "at least 12,000" Diné subject to relocation under P.L. 93-531 remained on the land. Official government estimates were unavailable. For further information, see Lacerenza, Deborah, "An Historical Overview of the Navajo Relocation," *Cultural Survival Quarterly*, Vol. 12, No. 3, 1988.

91. Quoted from *Navajo Times*, August 31, 1978. At the time Goldwater made this statement, Judge Walsh's order approving the Simkin partition line and requiring relocation of all Dinés within the Hopi partition area had been in effect for more than a year and a half.

92. For example, on August 31, 1978, the *Arizona Star* editorialized, under the title "Goldwater's Confusion," that the senator, "who either has uniformed or inaccurate sources on Arizona Indian affairs, has not spent enough time gathering firsthand information or he has simply lost interest in the subject. If the latter is true, [he] should refrain from public comment."

93. It is instructive to note that Congressman Wayne Owens, who sponsored

Boyden's successful draft legislation, went to work for Boyden's Salt Lake City law firm after being voted out of office in Arizona. He now serves as a congressman from Utah. As should be evident by now, this sort of incestuous government/private sector relationship is not unique in the saga of Big Mountain. To the contrary, it seems rather typical of the conduct of U.S. Indian affairs more generally.

94. 94 *Stat.* 932; 25 U.S.C. §§ 640d-28 (1983). Perhaps one reason this superficial deviation from the P.L. 93-531 hard line was passed with relatively little furor was that John Boyden died in mid-1980. He was replaced as attorney for the Hopi IRA government by John Kennedy, a senior partner in Boyden's law firm. By all accounts, the stance and attitudes adopted by Boyden over nearly 30 years of involvement in the "land dispute" have been continued unchanged.

95. Danny Blackgoat, interview on radio station WKOA, Denver, CO, March 13, 1985. For further development of this theme, see Redhouse, John, *Geopolitics of the Navajo-Hopi Land Dispute*, self-published, 1985; available through the Big Mountain Legal Office, Flagstaff, AZ.

96. Parlow, *op. cit.*, p. 202.

97. *Ibid.* The author quotes Indian Commissioner Ross Swimmer as applauding Udall's action in at least momentarily opening the door for the BIA to begin forced relocation operations. Although Swimmer himself has been replaced as head of the BIA, the sentiments he represented within the Bureau have not changed appreciably.

98. Diamond, *op. cit.*

99. *Ibid.*

100. The term is taken from a speech by Morris delivered at the Federal Building, Denver, CO, May 19, 1989.

101. Diamond, *op. cit.*

102. *Ibid.*

103. The quote is taken from a talk given by Roberta Blackgoat during International Women's Week at the University of Colorado/Boulder, during March 1984. Mrs. Blackgoat is one of several elder women who emerged as primary spokespersons for the Big Mountain Resistance during the 1980s. Her son, Danny, served for a period as head of the BMLD/OC office in Flagstaff (see note 95, above).

Organizational Note

The editors, staff and board of IWGIA do not necessarily share all of thanalysis and conclusions arrived at by various contributorsto its documents. We do, however, firmly believe in the right of indigenous people to express their viewpoints concerning even the most sensitive and controverial issues shaping their destinies. For a more "official" IWGIA perspective on the situation at Big Mountain, see the article prepared by the staff which appears in the *IWGIA Newsletter*, No. 46, July 1986, pp. 104-120.

For the Taking
The Garrison Dam and the Tribal Taking Area

by Terri Berman

The Garrison Dam, conceived in the 1940s and constructed in the 1950s, has had the greatest impact on the Indians of Fort Berthold, North Dakota, since the nineteenth-century smallpox epidemics reduced their numbers to near cultural extinction. Nearly one century later, the Three Affiliated Tribes – Mandan, Hidatsa and Arikara – had successfully recovered through intermarriage and cultural replacement.[1] They preserved their distinct cultural traits through the early reservation period, despite conscious efforts by the Department of War (formerly the overseeing body of Indian affairs) and Christian missionaries to eradicate native beliefs and practices.

By the 1950s, the Army Corps of Engineers, with the cooperation of the U.S. House and Senate, had implemented the Garrison Dam project. As a consequence of this project, the newly recovered reservation economy was effectively destroyed; its impact can still be felt in all aspects of contemporary Indian thought and action. More than 90% of the Fort Berthold population was relocated to accommodate the dam. The dam produced visible effects on the native economy, health, housing and social cohesion. Contemporary reservation life bears witness to the effects of resettlement through families whose members span the generations from pre- and post-dam periods. In order to appreciate these effects, a glimpse into reservation life prior to construction of the dam will introduce the unique and complex life of the Three Affiliated Tribes.

Historical Overview

Before the first smallpox epidemic (1782), the Hidatsa, Mandan and Arikara were distinct nations, each comprised of independent bands that occupied separate and autonomous village sites.[2] These groups frequently sought alliances among themselves and other groups in order to unite against common enemies. After the second smallpox epidemic, the Mandan and Hidatsa peoples united and moved north to the site of Fort Berthold, where the Arikara joined them in 1862. The period from 1845 to 1886 was fraught with famine, social disorganization and dependence on white traders.

In 1876, the first resident missionary arrived at Fort Berthold and estab-

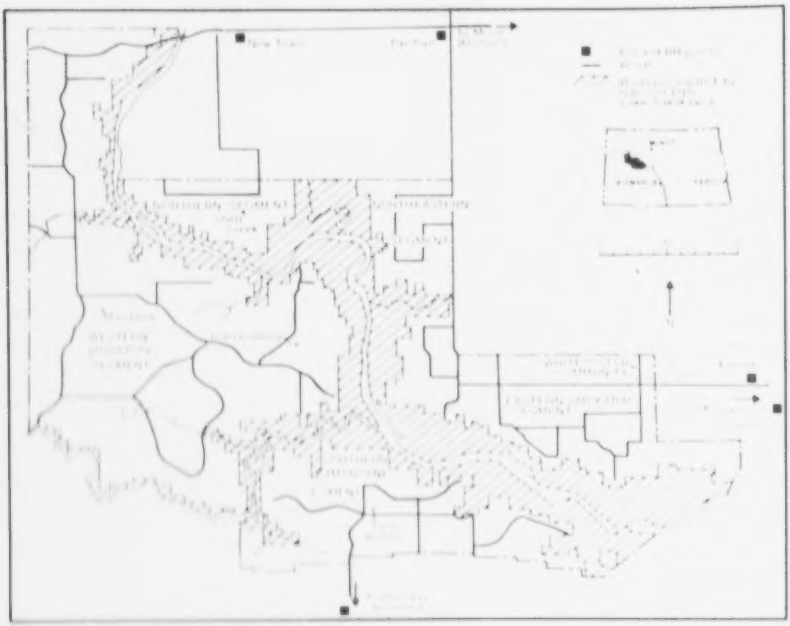
This article originally appeared in *Cultural Survival Quarterly*, Vol. 12, No. 2.

lished the Congressional Church of Christ, an event that marked the beginning of rapid and widespread missionization by Protestant and Catholic clergy. Social organization became structured around "village church" complexes which coincided with the decline of traditional age-graded societies and attempted to replace matrilineal clans with nuclear family structures.[3] Shifts in occupational roles tended to mirror American frontier motifs, whereby men became admired as cowboys, ranchers and soldiers, and women were rewarded for domestic accomplishments.[4] Conflicts in this early reservation period not explored in the existing literature involve the reversal of gender-based occupations, by which men were taught modern techniques of farming, thereby encroaching on what was traditionally the domain of women. Furthermore, factionalized conflict developed between traditional and "white-oriented" Indians.[5] An example involves the dissolution of the Black Mouth Society (a native organization that enforced ceremonial obligations and culturally appropriate behavior) and the installation of a reservation police force charged with the task of halting any ceremonial dances. These clashes often resulted in bloodshed or death, finally dividing communities and disrupting kinship relations.

Through these hardships and an ensuing social reorganization, assimilative forces had successfully converted a semi-sedentary horticulturalist and warrior society into full-scale agriculturalists and wage laborers. By the 1920s, ranching and farming economies had taken hold, and Indians successfully competed in the cattle industry of North Dakota. Throughout this predam period, the Three Affiliated Tribes maintained a lower alcoholism and welfare rate than neighboring whites.[6] Women had incorporated the new materials and techniques of church sewing circles, and elevated "arts and crafts" to high levels of artistry. Men became expert equestrians and heroes of both world wars. By the 1930s, government and church education programs stepped up efforts to enforce compulsory English language programs. Despite negative effects of intergenerational conflict and associated culture loss linked to native language loss, the use of English facilitated communication among the three peoples. The establishment of a newspaper further allowed for reservation-wide communication regarding important decisions affecting Indian rights, such as the proposed Garrison Dam.

Up to this point, the Three Affiliated Tribes were forced to adjust to the upheavals of disease, missionization, a disrupted economy and reservation life in general. It was at a point of remarkable demographic and economic recovery that plans for damming the Missouri River were being considered along reservation lands throughout North and South Dakota – lands that had been protected by treaty since the 1800s. Land issues and factionalized conflict discussed above were renewed and exacerbated by the removal of

Fort Berthold Indian Reservation



people, homes and community services built up through intensive periods of cultural assault and adjustments. Additionally, any sacred shrines, not protected by the Indian Religious Freedom Act and the National Historic Preservation Act, were forever submerged under the floodgates of the Garrison Dam.

The Land Base

The first cession of lands by treaty was accomplished by the 1851 Fort Laramie Treaty; it designated 12,500,000 acres of reservation lands between the Yellowstone and Missouri Rivers. Through subsequent government actions, this acreage was reduced to 640,000 by 1910.[7] In his Ph.D. research for Harvard University, Reifel noted that "since their first treaty at Fort Laramie...they have relinquished title to an area greater than that of the states of Massachusetts and New Hampshire combined."[8] As early as 1944, congress designed a "Plan for the Development of the Missouri River Basin" that was outlined by Public Law 534. Deliberations ensued without Indian input on two plans submitted under the Flood Control Act; Colonel Lewis A. Pick

and W. Glenn Sloan each submitted recommendations for suitable taking areas for Missouri River dam construction. White opposition mounted and joined with Indian opposition during the time that Sloan's surveys favored predominantly white settlements. Ultimately, a joint resolution in which Col. Pick imposed his plan on the Army Corps of Engineers was enacted, incorporating some of Sloan's recommendations but ignoring his assessment to leave out tribal holdings. White support of Indian opposition to the dam declined radically with Congress' acceptance of the "Pick-Sloan Plan." The final plan involved taking of tribal lands and promised flood control and hydroelectrical improvements for Indians and surrounding white communities.

In 1947, the 80th Congress approved PL-296 which appropriated funds for "Flood Control, General." A contract was drawn up in 1948 for approval by the Three Affiliated Tribes. Indians feared that if they failed to consent to outlined terms, they would receive less adequate compensation in the future. In tears, council Chairman George Gilette "consented" to the coercive piece of legislation. "The truth is, as everyone knows," he said, "our Treaty of Fort Laramie...and our constitution are being torn to shreds by this contract".[9] By, 1949, provisions for compensation were passed by the Senate and the House and signed into law by the president. In 1950, the tribes voted 525 out of 991 adults to accept the provisions of the act.

By 1951, construction was underway and relocation procedures undertaken. The 1951 population included 356 families on 583,000 acres of reservation. Three hundred families were forced to relocate from more than 153,000 acres of flooded lands. The U.S. government believed that many families would choose to permanently move to urban areas under federal job training programs; however, cultural forces inhibited migration to the extent that many Indians viewed even the new reservation lands as "foreign" and inhospitable. Those who did migrate returned in much greater numbers than anticipated.[10] The loss of agriculturally rich bottom lands has continued to alter the overall way of life of what were previously a self-sufficient people. Moreover, the taking area included important natural resources that figured highly in the Indian economy: the floodplain timber that provided logs for houses, fence posts and natural cover for wintering livestock; the wild fruits and berries; and the game that supplemented the Indians' food supply.[11] Water supplies were replaced by drilled wells that have proven inadequate and dangerous for drinking. A recent (1987) panel discussed the health effects of the high alkaline water that many people have been forced to drink over the years:

> On the river bottom we had plenty of water to drink, wash and water our livestock. When we were forced to move to the upper plains, wells were dug

Land flooded behind the Garrison Dam, Fort Berthold. (*Photo: Terri Berman*)

> so deep that you could not pump them by hand...When we moved to the prairie, we could no longer eat chicken eggs...they were blood red because of the water! The water was not suitable even for the animals.[12]

The poor water supply has forced many residents to move from the rural countryside to the hub of reservation activity at New Town. Moreover, the building of the dam created land segments that physically divided portions of the reservation from one another, resulting in fragmentation that renewed old tensions and created new factions.

The relocation severely disrupted Indians' cultural beliefs and practices. The Mandan and Hidatsa, for example, share origin myths that expressly foretell of continual migration upstream along the Missouri River bottomlands. Archaeological evidence reveals migration patterns in corroboration with these beliefs.[13] The construction of the dam thwarted their movement. Although developers did make some effort to relocate cemeteries and shrines, these were largely associated with Christian churches and monuments. Baby Hill, a grave site for infants and a prayer site for women who hoped to become pregnant, is irretrievably submerged below the dam.[14] Additionally, clan burial sites, where skulls were placed in a circular formation to mark the cohesiveness of clan bonds, have also been destroyed by the dam.

Many structures, such as the long-promised hospital, have not been forthcoming and others have proven inadequate. Modern, unfamiliar and poorly constructed housing has contributed to the social disorganization initiated by relocation. Housing authorities recommended replacing the (by then) "old style" log houses with prefabricated government housing units.

Some people opted for moving their houses to the new reservation. As Iva Goodbird recalled:

> I was in the middle of giving a cosmetics party when they came...they told us to leave in the morning. [So] we spent the whole night packing and in the morning we woke up to jackhammers.

Iva and her family followed their house to where it stands today near New Town. All but the doghouse was transported.

Final relocation was completed by 1955; by 1960, there was a marked decline in the standard of living. By this time, only 19% of the population still lived in log houses; 53% occupied frame houses, described as poor or fair. By, 1967, 90% of the housing was classified as substandard; 87% of the homes lacked a safe, sanitary method of refuse disposal; and 81% of the people had to carry water a half-mile or more.[15]

These conditions, coupled with growing dependence on a cash economy and a shift in nutritional goods from fresh goods to government commodities, have several repercussions: Indians rely increasingly on federal welfare programs, and poor health conditions, increased alcoholism and crowded living conditions abound. Federal Housing Authority policies have forced elders to sneak their family members into units designed for solitary living – a concept not only foreign to, but considered inhumane by even the most "nontraditional" Indians.

The conflicts between traditional values and contemporary problems have resulted in physical distress and psychological unrest. Examples range from diabetics who must travel more than 200 miles for dialysis treatment twice a week to families who have been forced to lease their lands to white ranchers who can better afford the necessary equipment and labor. Today, reservation priorities include claims to land use areas surrounding the dam and the continuing struggle to obtain just compensation, both monetarily and in "equal value" development strategies. These involve recent meetings of Tribal Chairman Ed Lone Fight with the Army Corps of Engineers to discuss profit sharing from a growing tourist industry and reservation control over the shoreline.

Diverted profits are a common result of industrial development, in which revenue is exported away from the reservation land base and reinvested in non-Indian business ventures. For example, the Army Corps of Engineers benefits from the leasing of "resort" land to developers along the shoreline of the Garrison Dam. As Tribal Chairman Lone Fight has remarked:

> When the Garrison dam was built, the Corps' concerns were flood control and hydroelectric power...[but] Corps [officials] are just land brokers...high geared real estate brokers.[16]

Marianne Ambler has pointed out that the concern of the Indians is "not so much the value of the resources, but who controls them."[17] The continued efforts of the Fort Berthold peoples, as exemplified by recent reservation hearings, illustrate this concern and the will of native people to act in their own behalf toward their stated goal – control over their own lives and natural resources.

Notes

1. See Bruner, E., "The Mandan," in Edward H. Spicer (ed.), *American Indian Culture Change*, University of Chicago Press, Chicago, 1961.

2. Bowers, A., *Mandan Social and Ceremonial Organization* (University of Chicago Press, 1950), and "Hidatsa Social and Ceremonial Organization" (*BE Bulletin*, No. 94).

3. See Lowie, Robert, "Societies of the Mandan and Hidatsa," *AMNH Anthropological Papers*, No. 11, pp. 219-358. Also see Walker, Deward E., *Conflict and Schism in Nez Perce Acculturation*, University of Idaho Press, Moscow, 1985.

4. Bruner, *op. cit.*

5. See McFee, M., *The Modern Blackfeet: Montanans on a Reservation*, Holt, Rinehart and Winston Publishers, New York, 1972.

6. Reifel, B., *Relocation on the Fort Berthold Reservation*, unpublished Ph.D. dissertation, Harvard University, 1952.

7. Merrill, Richard, *The Village Indians of the Upper Missouri*, University of Nebraska Press, Lincoln, 1977, p. 47.

8. Reifel, *op. cit.*, p. 4.

9. Meyer, *op. cit.*, p. 217.

10. Ablon, J., "Relocated American Indians in the San Francisco Bay Area, in Deward E. Walker (ed.), *The Emergent Native Americans*, Little, Brown and Co., Boston, 1972.

11. Merrill, *op. cit.*, p. 220.

12. "Hearing on Hunger Attracts Large Audience," *Ahead of the Herd*, Vol. 5, No. 12, 1987.

13. See Wood, Ronald, "The Origins of the Hidatsa Indians: A Review of the Ethno-Historical and Traditional Data," in *Reprints in Anthropology*, No. 31.

14. Bowers, *op. cit.*

15. Meyer, *op. cit.*, p. 243.

16. "Council to Meet With Corps of Engineers Today," *Ahead of the Herd*, Vol. 5, No. 13, 1987.

17. Ambler, Marianne, "The Three Affiliated Tribes – Mandan, Hidatsa and Arikara – Seek to Control Their Energy Development," in Joseph G. Jorgenson (ed.), *Native Americans and Energy Development II*, Anthropology Resource Center, Boston, 1986.

Implementing Indian Treaty Fishing Rights
Conflict and Cooperation

by Fay G. Cohen

Many battles are fought by native people throughout North America. They occur on several fronts, including the educational, economic, health and criminal justice systems. Among the critical current issues are native rights to utilize and manage natural resources, including land, water, wildlife, and fisheries. When a highly contentious issue moves from controversy to cooperation, the process may provide useful insights for addressing similar controversies in other regions. This is the case with Indian treaty fishing rights in the U.S. Pacific Northwest.

The treatied peoples of the Northwest endured more than a century of denial of their rights. In recent years, however, the situation has moved largely from confrontation and litigation to affirmation of tribal fishing rights and recognition of tribal management authority. Patterns of negotiating outstanding and new issues have also been established. The terms "co-management" and "cooperative resource management" have been used by participants and observers to describe the new arrangements. In the U.S., the transition from state-dominated management of the fishery resource in Washington State to one in which indigenous nations share decision-making power with the state has been a lengthy process. It is not an exaggeration when participants in the process liken it to "turning a battleship."[1]

This article examines the history of the controversy over Northwest treaty fishing rights and describes recent trends. It considers the forces underlying the evolution from conflict to cooperation and highlights several still unresolved issues. Finally, it explores some of the implications of the Northwest case for other regions. The treatment here provides mainly an overview of developments. Detailed analysis of the Northwest Indian treaty fisheries controversy may be found in *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians; Indian Tribes: A Continuing Quest for Survival;* and *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights.*[2]

Historical Background

For the Indian peoples of the Pacific Northwest, fish were "not much less necessary than the atmosphere they breathed."[3] The tribal people centered both their diet and their way of life around the great runs of anadromous fish,

the salmon and steelhead trout, that returned annually to their homes along the rivers and coastlines. When they negotiated treaties with the United States government in the 1850s, they gave up much of their land in return for cash payments, other aid, and the federal guarantee of protection for the fishing rights they retained. "This paper secures your fish," treaty negotiators told the native people.[4]

In the years that followed, however, the tribal right was eroded by other claims on the fish and their habitat. The growing non-Indian commercial fleet and increasing numbers of sport fishermen pushed Indian fishermen aside. State regulations restricted Indian use of traditional fishing techniques and places. Indians were forbidden to fish in the rivers and the tributaries where they had fished from time immemorial. They were not permitted to use traditional fishing techniques such as spearing and snaring. The government also forbade net fishing for steelhead – a traditional winter food and proportion of the Indian trade. These restrictions imperiled the traditional Indian way of life. The encroachment by non-Indian fishing interests deprived the Indians of their major source of food and, in come cases, brought them near to starvation.[5]

In addition, logging, farming and industrialization degraded rivers and estuaries necessary for the survival of the salmon. These threats to the salmon resource further imperiled the traditional Indian livelihood. The Indians resisted these encroachments in order to feed their families and risked arrest by fishing and trading clandestinely. Still, the Indian harvest declined drastically. By 1964 it was estimated that Indians were catching only 5% or less of the Washington state harvest,[6] while the non-Indian commercial fishery was so overcrowded that one-third to one-half the boats then fishing were unnecessary to catch the number of fish available.[7]

Beginning in the mid-1950s and gaining momentum in the 1960s, tribal people participated in a series of "fish-ins" in western Washington and along the Columbia River. They fished at times and places forbidden by state law, but permitted by their understanding of the treaties. These tribal fishermen faced repeated arrest, jail, and confiscation of gear. Deloria and Lytle recently described the importance of the fish-ins in the contemporary struggle for Indian rights:

> Indian activism was certainly an invention of the tribal Indians. They devoutly believed that whites in positions of authority would give them justice if only they knew the conditions under which the tribe lived. They were absolutely fearless in exercising their treaty rights and believed implicitly in the neutral operation of a kind of abstract justice they believed would uphold them...The first activist events of the sixties were the 'fish-ins' in the Pacific Northwest.[8]

It took many years for the Indian's expectation of justice to be fulfilled. The fish-ins led to a series of court cases which affirmed and delineated the

The Traditional Way: Platform fishing along the Columbia River, ***circa*** **1987 (*Photo: Paulette D'Auteuil-Robideau*)**

nature of the treaty right. Three cases involving the Puyallup Tribe which reached the U.S. Supreme Court were concerned with tribal rights to engage in net fishing for steelhead and salmon on the Puyallup River.[9] *Sohappy v. Smith* (which later became consolidated with *U.S. v. Oregon*) was heard in Oregon District Court[10] and affirmed the Columbia River tribes' right to a fair and equitable portion of the fish passing through their traditional fishing places. *U.S. v. Washington* was first heard in Washington District Court by Judge George H. Boldt.[11] This pivotal case dealt with the tribal right to fish at usual and accustomed fishing places off the reservation. It included fishing for subsistence, ceremonial, and commercial purposes. (The exclusive right to fish on the reservations was well-established and not an issue here.) This part of the case became known as Phase I. A second, related phase (Phase II) was to be heard later. It asked: Do fish allocated to Indian tribes include hatchery-bred and artificially propagated fish?; and do the treaties guarantee the continued protection of the salmon against destruction of its habitat?[12] The issue of an "environmental right" raised in Phase II remains in the courts today.

In 1974, Judge Boldt interpreted key treaty language protecting the right

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Northwest Indian treaty fishing as affirmed in *U.S. v Washington* (*Photo: Northwest Indian Fisheries Commission, Steve Robinson*)

to "fish in common" with citizens of the territory to mean that indigenous nations had the right to an opportunity to catch half the harvestable fish destined for their traditional fishing places. In addition to spelling out specific guidelines for allocation, his ruling recognized that indigenous nations had the authority to manage their fishery in these places. Judge Boldt's decision met with strong resistance which severely impeded its implementation. During the five years following his ruling in *U.S. v. Washington*, Judge Boldt and native governments sought to enforce the decision while state officials and non-Indian fishermen used the courts and the waters to counter these efforts. Protests, petitions and car bumper stickers ("Nuts to Boldt") were directed against the Judge. A massive outlaw fishery defied his ruling. In 1977, federal enforcement officers had to be called into enforce the court's orders. The federal government – which had supported indigenous peoples in their litigation in the case – formed a task force to mediate the controversy and to suggest a system that would decrease the Indian harvest and reduce their management authority.

Indian fishermen reported threats and intimidation.[13] The Ninth Circuit

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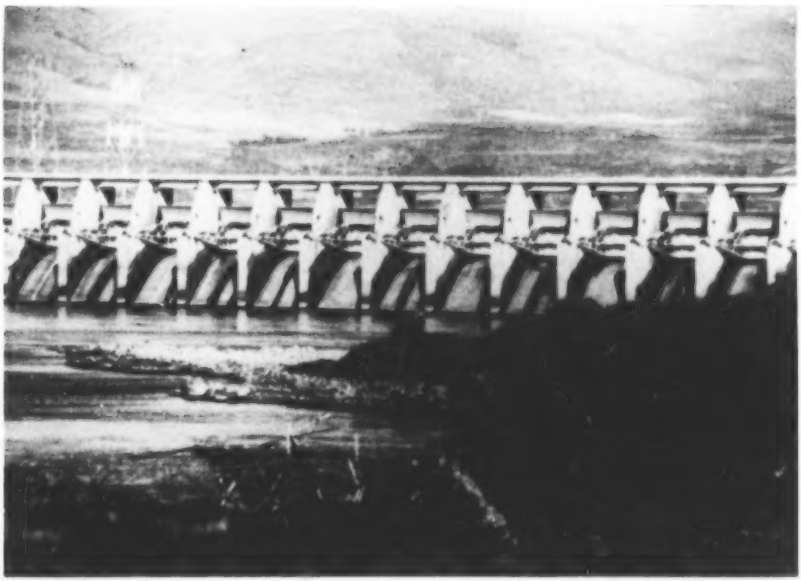
Court of Appeals compared the Northwest situation to the struggles of the Civil Rights Movement in the U.S. South: "Except for some desegregation cases...the district court has faced the most concerted official and private efforts to frustrate the decree of a federal court witnessed in this century."[14] Finally, in 1979, the U.S. Supreme Court substantially affirmed Judge Boldt's ruling, and Congress passed legislation and appropriations for salmon and steelhead conservation and enhancement.[15] The definitive court ruling combined with legislative support sent firm signals that treaty rights must be respected and thus cleared the way for implementation of the new management system. The treaty tribes now catch approximately their allocation of fifty percent.[16]

The increase in the Indian catch has enabled a growing number of tribal members to participate in fishing. Andy Fernando, former chairman of the Upper Skagit Tribal Community in Sedro Wooiley, Washington has described the impact of the *U.S. v. Washington* in the following way:

> Decades of decay in many Indian communities have given succeeding generations fewer reasons to follow the traditions and to remain active in tribal society. The Boldt decision has acted as a catalyst to change that. In years past, most talented Indian people left the reservations. Driven away by lack of jobs or a future, they fled to opportunities in the cities. Their exodus sapped strength from the reservations. The fishing right assured by the Boldt decision has reversed the trend. The elation and positive feeling of pulling a fifty-pound salmon into the boat is being translated into social change and activity in more than two dozen Indian communities. Following the 1974 decision, many young Indian people returned to their tribes at first only to fish. But now they stay on because they see renewed activity in their tribal communities. Those people bringing skills have found welcoming tribal councils and communities eager to tap their knowledge and experience. Those willing to learn have found new opportunities, training, and employment in tribally operated housing, health, and service programs, in the many tribally owned businesses that have emerged in recent years, and in the tribal salmon management programs created under the Boldt decision. No one is suggesting that the Boldt decision has solved all the problems in Indian country, but the opportunities created directly or indirectly from the legally secured right to fish are the difference between staying and leaving for many young Indian families. Today, when young Indians leave the reservation for college or to learn a skill, most intend to return and use their knowledge close to home. And many of those young people will return, to stay and build a future.[17]

For indigenous nations, *U.S. v. Washington* and its implementation have helped to restore the legacy of a traditional livelihood, a sense of community and a deep pride in their culture.[18] U.S. and Washington set the framework for the development of the management structure in which tribal authority



One of many hydroelectric facilties that affect salmon runs along the Columbia River today. Note fishing scaffold in foreground (*Photo: Paulette D'Auteuil-Robideau*)

was recognized. As the battles of the 1970s were left behind, the decision gave impetus to new initiatives in the 1980s.

The Evolution of Cooperation

Today the treaty tribes and state agencies work cooperatively to manage the fishery. The state manages the fishery used by fishermen holding state licenses, while indigenous nations regulate their members who hold tribal licenses. Native governments establish regulations, issue licenses, and enforce rules for fishing in their traditional fishing places. Some tribes manage their fisheries on a tribal level, utilizing community-based committees, while others, such as the Skagit System Cooperative and Point No Point Treaty Council, have formed cooperatives to share management tasks. Indigenous people are actively engaged in habitat protection, fisheries enhancement, and fisheries research in their areas. In tribal fisheries, traditional patterns coexist with modern ones. Some communities celebrate the First Salmon Ceremony at which they gather to greet and honor the first returning salmon and to show respect for the renewal of the natural cycle. Indian fishermen still harvest fish

for food for their families. They also use modern gear for the now substantial commercial harvest. Indigenous nations, along with the intertribal Northwest Indian Fisheries Commission in western Washington and the Columbia River, Intertribal Fish Commission in Oregon (which serve as coordinating agencies providing services in technical matters and public information), rely on modern technology such as computers to compile harvest data, to develop models for future planning, and to provide electronic communication. Highly trained biologists (both non-Indian and Indian) provide technical expertise to native peoples and the commissions. The system thus combines elements of old and new in its ongoing operation.

Further, indigenous nations participate actively in joint planning with state agencies. In contrast to the earlier era, when communication between Indians and state fisheries agencies was almost nonexistent, policymakers and technical staff from all parties now communicate and interact frequently in a variety of settings. Tribal members hold positions on key regional and international fisheries management boards. Participants in the system frequently say "the tribes are just a part of doing business today." How did this remarkable change occur in a decade? The adversarial atmosphere of the 1970s evolved into the cooperative era of the 1980s within the shadow of the court. The district court still retains jurisdiction in the case, and has established a series of nonjudicial dispute resolution mechanisms that support mediation and nonlitigious settlement of differences. The subproceedings in the case fill several volumes, testifying to the complexity of implementing the new management regime.

Several key factors underlie the changes. First, the court provided the legal framework and the impetus for change. Its role has been termed "fundamental" by non-Indians who worked with tribal leaders to bring about a more cooperative arena as well as by tribal members. "Legal horse power" is another way that the driving force of the court has been described. Professor Kai Lee of the University of Washington has characterized the court's role in the change as "the creative use of coercion."[19] In this sense, the new system evolved because the law forced change. People had to adapt their behavior accordingly. As a leader in the Washington environmental movement has stated, "People may not have seen the light, but they felt the fire."[20]

The formation and strategy of the Northwest Water Resources Committee provides an illustration of how the process of change occurred. Established by major Northwest timber, utility and banking companies, this committee wanted to assess the implications of a 1980 ruling in Phase II, which supported the concept of environmental protection for treaty fisheries.[21] The industrialists were concerned about the limits that such protection might place on future development and about the uncertainty it could engender. They hired an attorney who had previously worked on treaty issues. His

Western Washington Treaty Areas. ***Source: Northwest Indian Fisheries commission.***

analysis highlighted the record of legal losses suffered by treaty opponents. He outlined the available options and recommended direct negotiations with tribes.[22] The corporations agreed.

Legal pressure appears to have been an essential element in the evolution of cooperation but not the only one. Other closely related factors were also important. Norman Dale, in his article "Getting to Co-Management: Social Learning in the Redesign of Fisheries Management," suggests that the court decisions in the U.S. Northwest combined with other factors to establish a context for "social learning," whereby a fundamental shift in the framework of organizational attitudes and interorganizational behavior has taken place.[23] The emerging situation has been characterized by a state policy shift from litigation to negotiation, by the emergence of tribal and non-tribal sponsors of cooperation, and by the development of an array of working relationships between tribal, governmental, industrial and environmental groups.[24] Leaders in each of these groups who were committed to finding a new process for solving problems played a critical role in the changes that have occurred. Policy direction from two state governors and clear instructions by agency heads to their staff

encouraged implementation of the cooperative management system. The establishment of the Northwest Renewable Resources Center, with a broadly representative board, has also played an important role as facilitator of change.

The cooperative process has had tangible results. These include the successful negotiation of the Puget Sound Management Plan for salmon in 1985, the formation of a coalition to complete a long-awaited U.S./Canada Salmon Treaty in 1985 and the development of a Timber, Fish and Wildlife Agreement in 1987 which led to important changes in Washington state forestry practices. Further, Washington State and several tribes negotiated a hunting agreement that took effect in the fall of 1988. On the Columbia River, a new fish management plan was agreed upon by Oregon, Washington, the U.S. and four tribes in 1988 following several years of negotiation. The process of working together and the positive conclusion of these efforts has reinforced participants' commitment to the process. Fisheries experts have stated that early results of cooperative fisheries management indicate that it is working effectively. William Clark of the University of Washington, School of Fisheries in Seattle, Washington, analyzed the decade following the Boldt decision and concluded:

> Puget Sound salmon management is a success overall, at least in the author's opinion. Some problems remain, but the prospects for solving them are better than for most other fisheries.[25]

Michael Blumm, editor of the *Anadromous Fish Law Memo* of the Lewis and Clark Law School in Portland, Oregon, has stated that:

> Recognition of the tribes as managers as well as harvesters has, while complicating management, also induced better decision making by requiring better data and more publicly accountable decisions. The treaty right even fostered an international agreement to better manage harvests and national legislation designed to double run sizes. There is little question that the beneficiaries of the treaty right to fish are not limited to the signatory Indian tribes.[26]

All of the plans and agreements continue to be monitored. The resulting evaluations will be critical in assessing the operation of the new system in the coming years.

Participants in the new system describe it in a variety of ways and their perspectives provide a tangible sense of the current process. Bill Frank, Jr. participated in the early struggles and is now the Chairman of the Northwest Indian Fisheries Commission (a coordinating body established by the treaty tribes). He has long counseled cooperation: "We have got to include everybody...gaining trust took a long time. We have to work together with our neighbors."[27] Jim Waldo, an attorney who frequently has served as negotiator and who provided advice to the Northwest Water Resources Committee has stated, "Cooperation is at an early state but not embryonic."[28]

Yakima elder David Sohappy addressing a gathering of supporters on his conception of indigenous fishing rights, Portland, Oregon, 1987 (*Photo: Paulette D'Auteuil-Robideau*)

In the view of Rolly Schmitten, formerly assistant to the governor and now Regional Director of the U.S. National Marine Fisheries Service, "A small, fragile element of trust has developed. It is based more on individuals than on process. It is based on the philosophy that rational persons can work things out. The common bond is the resource."[29]

On August 4, 1989, as part of the state's centennial, the state and the treaty tribes signed the Centennial Accord, which outlines the guidelines and principles of government-to-government relations between indigenous nations and the state. A ceremony and celebration was held at the Burke Museum on the University of Washington campus. For that occasion, Bill Frank, Jr. stated, "We cannot let the confrontation of the past dictate the shape of the future. Government-to-government, we can work together toward a better tomorrow." The Governor of Washington, Booth Gardner, stated, "This accord sets the pace for the rest of the nation. Once and for all, let us recognize the mutual benefits of government-to-government relations."[30]

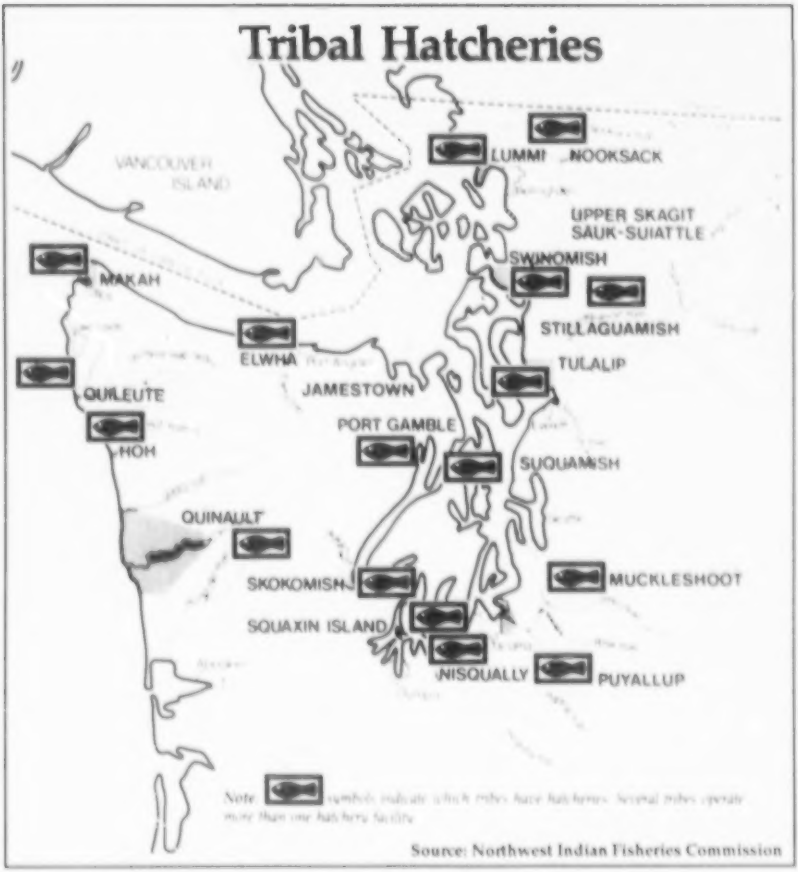
Despite the remarkable changes that have occurred in the last decade, there continue to be problems that require resolution. One issue involved rights to harvest shellfish. Over the past several years, representatives of state agencies and tribes have attempted to resolve the question of Indian rights to

shellfish. These negotiations were unsuccessful and the case has now gone to court. A key factor in the case is the question of who owns the tidelands on which the shellfish grounds are located. This complex issue, involving the federal government, the state, private landowners and indigenous nations, may spend a long time in the courts and the financial costs may be high. There also may be non-financial costs; the movement of this case from the arena of negotiation into the adversarial arena of the courts has the potential to dampen cooperation on other issues.

The allocation of shared fish runs between various tribes is another unresolved issue. Judge Boldt's ruling in *U.S. v. Washington* respected tribal autonomy; he left to indigenous nations to decide how to divide the treaty share within those areas where the fish passed through the sites of more than one tribe or where their fishing places overlapped. Since indigenous nations must fish within their own traditional fishing places, complex geographic and biological questions are involved in allocating these shared rights. Currently, some Indians are earning far more than others and are reaping greater economic benefits. An intertribal mediation project to deal with this issue has been ongoing for several years but has not yet found a resolution. If no agreement is reached, indigenous nations may exercise their option of taking the issue to court.

Indigenous nations continue to express concern about environmental issues that affect fish and, in turn, a fishing livelihood. The Yakima Indian Nation recently drew attention to the threat posed by pollution of the Columbia River System by pulp and paper mills. The Columbia River Intertribal Fish Commission News reported that EPA and industry studies indicate that dioxin is present in some Columbia River fish, including sturgeon and salmon, giving rise to apprehension over the use of these fish in the Indian diet and in commerce.[31]

Another current issue involves political challenges to the present relationship of shared authority between state and tribal fisheries managers. The 1988 Washington State gubernatorial race incumbent, Booth Gardner – a proponent of cooperative management and signatory to the Centennial Accord – was challenged by Bob White, who advocated a return of all natural resource management authority to state agencies. Although his position was clearly untenable under the current legal mandate, and he was defeated in the election, White gained support form a segment of the population which opposes Indian treaty rights. Anti-treaty groups such as S/SPAWN (Salmon/Steelhead Protective Association and Wildlife Network), based in Washington, and STA (Stop Treaty Abuse), based in Wisconsin, continue to challenge the implementation of legally affirmed Indian treaty rights. This threat is perhaps most evident in the controversy surrounding Chippewa treaty rights to natural resources in Northern Wisconsin.



The Indian Treaty Fishing Rights Controversy in Wisconsin

The Great Lakes Chippewa (Anishinabe) bands in the U.S. are located in the middle of North America in a region defined by Lake Michigan, Lake Superior, and Lake Huron and dotted with thousands of smaller lakes. The region includes states of Michigan, Minnesota, and Wisconsin. The treaty rights of the Anishinabe in all three states have been the subject of important lawsuits in recent years. This discussion deals primarily with the Anishinabe of Wisconsin.[32] The traditional economy of the Anishinabe was based on hunting and gathering:

> The Chippewa harvested virtually everything on the landscape. They had some use or uses for all flora and fauna in their environment, whether for food, clothing, shelter, religious, commercial or other purposes.[33]

In the mid-nineteenth century, the Anishinabe ceded much of their vast lands through treaties with the United States, but they reserved their rights to the resources in these ceded territories. State restriction severely eroded these protected rights. Recent federal court rulings have upheld the Anishinabe's continuing right to use and manage resources including many species of fish, game and plant life. Although the Anishinabe lifestyle has changed in many ways, these wild resources continue to have major cultural and economic value.[34]

The Anishinabe bands have been working with state agencies in Wisconsin to develop a management framework for different species within the framework of the court rulings. Busiahn has described successful negotiations characterized by shared decision making for Lake Superior fisheries.[35] He contrasts these arrangements with the difficulties surrounding management of the diverse inland fisheries in the smaller northern Wisconsin lakes. Indeed, Indian treaty rights have become the focus of intense conflict in northeastern Wisconsin. Protesters have gathered at the landings of lakes where Indians use the traditional method to spear walleye. Local anger is expressed in signs saying "spear an Indian – save a walleye."[36] As one observer recently stated, "There is a level of bitterness that is hard to understand." The anger extends beyond the landings and into the communities and schools. For the Anishinabe, "Harassment has become a fact of life."[37]

Rennard Strickland, Stephen J. Herzberg, and Steven R. Owens of the University of Wisconsin recently reported on the situation at the request of federal officials. They stated:

> The peaceful harvest of fish by Chippewa is threatened by non-Indians who barrage the peaceful fishers with rocks and insults, and who use large motorboats trailing anchors to capsize the boats of fishers. Because of this, the State of Wisconsin has pressured the Chippewa to give up their ancient rights to fish off of their reservation and has pressured them to do so immediately. This pressure has sometimes been applied indirectly, sometimes directly, but always upon the Chippewa. And all because a small group creates a disturbance in opposition to the Chippewa's federally recognized legal rights.[38]

In its document, "Moving Beyond Argument: Racism and Treaty Rights," the Great Lakes Indian Fish and Wildlife Commission describes how some members of the public have moved the controversy into the realm of threats,

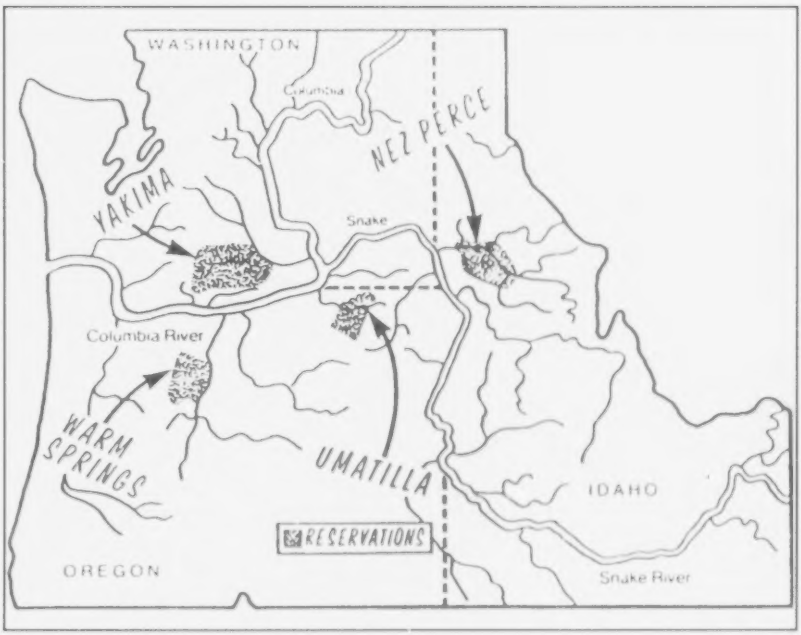
racial slurs, and violence – "a fearsome phenomenon."[39] The Center for World Indigenous Studies has studied the growth of anti-treaty organizations in Wisconsin and other parts of North America and has expressed concern that some of these groups may be converging with right-wing extremists with neo-nazi aspirations.[40] To counter the threats against the Anishinabe, some non-Indians have organized support groups and programs. These groups have drawn upon the churches, communities, and organization such as the Wisconsin Green Network. Their activities have included prayer vigils, seminars, and a program of serving as witnesses for nonviolence.[41]

Professor Strickland and his colleagues target two primary causes for the current problems: 1) state refusal to honor its legal and moral commitments to either Anishinabe or non-Indian residents, and 2) emergence of groups exploiting the economic stagnation of the region to focus non-Indian frustration and anger against the Anishinabe.[42] They urge a series of steps towards cooperation, based on a strategy protecting the Anishinabe and their rights, addressing racism and its manifestations, respecting and enforcing treaties, and developing comprehensive socioeconomic programs for the region.[43] They also describe several current examples of local cooperation to serve as models.

The Anishinabe struggle for affirmation and implementation of their rights differs from that of the Pacific Northwest tribes in details of history, treaty language, culture, and geography. The nature of the lake fisheries in the Wisconsin fisheries differs as well.[44] The general process, however, has important similarities in its broad contours. As James Horton of Washington's Klallam tribe observed during a recent visit to Wisconsin, "We've gone through all of the things you're going through."[45]

The Northwest experience provides both negative and positive lessons for Wisconsin. As Judge Barbara Crabb, who is currently hearing the Wisconsin cases, has observed: "The lengthy and contentious Washington litigation provided examples to avoid."[46] Although the Wisconsin experience has already entailed considerable litigation, the initial political and public resistance to the Northwest ruling provides another negative example. But there are positive lessons as well: The transition to cooperative management has proceeded well and the early reports on the new system indicate that it is successful, benefitting both Indians and non-Indians.

To what extent are conditions in Wisconsin ripe for movement from confrontation to cooperation? Some of the factors deemed essential for the "social learning" in Washington seem present, others appear less clear. The Strickland report describes some "sponsors for the process," but are there enough and are they in key decision making positions? It appears that Indian and non-Indian leaders at the local level, rather than state government officials, are taking a lead role in seeking new ways to work together. Cooperation from state agencies on



Member Tribes of the Columbia River Intertribal Fish Commission.
Source: Columbia River Intertribal Fish Commission.

some management issues has also been reported, but state adoption of a policy of cooperative management remains a topic of heated debate. As well, treaty supporters have criticized political leaders of both parties for not taking a strong stance against racism.[47] There are clear court rulings in Wisconsin, but they might not yet exert the level of "creative coercion" seen in the Northwest. The U.S. Supreme Court has refused to review the initial Wisconsin case, and facets of the Anishinabe litigation are likely to remain in court for some time. Anti-treaty spokesmen have called for Supreme Court review.[48]

The Northwest experience – with its negative and positive aspects – need not be seen as a prescription for change. Instead, it can be studied for insights into methods that move people toward cooperation. Dale's recent analysis of the lessons of the Pacific Northwest for "getting co-management" in British Columbia, Canada suggests several means of facilitating social learning: encouraging sponsors for co-management, providing opportunities for reflection, "seizing the moment" when changes in context create new possibili-

Member Tribes of the Great Lakes Indian Fish and Wildlife Commission.
Source: Great Lakes Indian Fish and Wildlife Commission.

ties for co-management, and interorganizational conference to search for common ground.[49] The Strickland report calls for rapid learning to deal with the controversy in Wisconsin. The authors state, "[I]f Wisconsin takes the full ten years to reach that cooperative management stance, terrible things can happen...if Wisconsin fails to learn from the Washington experience, the period of adjustment could destroy the more tenuous economy of Northern Wisconsin, damaging non-Indian and Chippewa alike."[50] Their recommendations are aimed at protecting Indian treaty rights while facilitating such learning and moving more rapidly from confrontation to cooperation.

Conclusion

In recent years, the treaty tribes of the United States have moved closer to regaining their rights to harvest and manage fish and other resources. Strong legal rulings have supported their claims to harvest and manage the

natural resources upon which they depended for centuries. Translation of rights guaranteed by federal treaty into the practical realities of contemporary politics has been very difficult, blocked by state action and the opposition of those who perceive their interests to be threatened by the exercise of Indian rights. The Pacific Northwest experience, however, indicates that confrontation can be replaced by patterns of cooperation. Former adversaries can learn to work together. Experience has shown, according to one veteran attorney in the Northwest cases, that "it is time to end the war."

Sharing harvests and management decision making is part of today's cooperative system in the Pacific Northwest. Indeed, sharing is itself a key concept underlying both the treaties and their implementation. The Washington treaties spoke of "fishing in common." Wisonsin rulings also state that Indian rights are held in common with those of non-Indians.[51] Historically, indigenous nations of both regions have a long history of sharing with non-Indians. This pattern is reflected in the recent statement by Nick Hockings, member of the Wa-Swa-Gon Association, an organization to support treaty rights among the Lac du Flambeau Band: "We want to share with non-Indians, we really do, we always have."[52]

Tribal members and non-Indians who work with them on cooperative programs frequently speak of another essential motivation for sharing: their common concern for the resource. There is increasing awareness of the fragility of the environment, of the need for conservation and enhancement, and of the goal of sustainable resource use.[53] In this context, the environmental dimension of tribal treaty rights becomes particularly important. Blumm has argued that the legal obligation almost certainly exists, even though it has not yet been defined in court rulings.[54] This "environmental right" – which may provide for habitat rehabilitation, clean water, and other shared benefits – is another basis for Indian and non-Indian cooperation.[55] The tribal share of the resource is directed toward meeting the needs of its members. For indigenous people, a sustainable resource base provides both an opportunity for economic development and a role in making decisions that affect their future.

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Notes

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3. *U.S. v. Winans*, 198 U.S. 371 (1905), p. 381.

4. Record of the council proceedings wherein the Treaty of Point No Point was negotiated and executed, January 26, 1855, Exh. PL-15, Joint Appendix to *U.S. v. Washington*, p. 331.

5. Cohen, *op. cit.*, p. 58.

6. U.S. Congress, Senate Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, *Indian Fishing Rights: Hearings on S.J.R. 170 and S.J.R. 171*, 88th Congress, 2d Session, U.S. Government Printing Office, Washington, D.C., August 5-6, 1964, p. 23.

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8. Deloria, Vine Jr., and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty*, Pantheon Books, NY, 1984.

9. *Puyallup Tribe v. Department of Game, et al.*, 391 U.S. 392 (1968); *Puyallup Tribe v. Department of Game, et al.*, 414 U.S. 441 (1973); *Puyallup Tribe v. Department of Game, et al.*, 433 U.S. 165 (1977).

10. *Sohappy v. Smith*, 302 F. Supp. 899 (1986); also known as *U.S. v. Oregon*.

11. *U.S. v. Washington*, 384 F. Supp. 312 (1974).

12. *U.S. v. Washington* (Phase II), 506 F. Supp. 187 (1980).

13. Cohen, *op. cit.*, pp. 100-1.

14. *Puget Sound Gillnetters Association v. United States District Court*, 573 F 2d 1123 (1978), p. 1126.

15. The U.S. Congress passed the Salmon and Steelhead Conservation and Enhancement Act of 1980 and the Pacific Northwest Power Planning and Conservation Act of 1980, which contained protection, enhancement and mitigation of fish populations affected by Columbia River power developments.

16. The system of harvest sharing on the Columbia River differs from that in western Washington. It is based on separate treaty and non-treaty fishing zones and on the allocation framework in the Columbia River Management Plan. See Cohen, *op. cit.*, Chapter 8.

17. Fernando, Andy, Introduction to Cohen, *op. cit.*, pp. xxiv-xxv.

18. *Ibid.*

19. Interview with Kai Lee, Seattle, November 8, 1988.

20. Interview with Marcy Golde of the Washington Environmental Council, Seattle, July 31, 1987; she was quoting a statement made in another context by Episcopal minister, Reverend Mac Cassidy.

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25. Clark, William, "Fishing in a Sea of Court Orders: Puget Sound Salmon Management 10 Years After the Boldt Decision," *North American Journal of Fisheries Management*, No. 5, pp. 417-34 (esp. p. 417).

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27. Bill Frank, Jr., statement at Tribal Co-Management Conference, May 1986.

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30. Quoted on invitations to the signing ceremony.

31. Columbia River Inter-Tribal Fishing Commission, "Dioxin: Yakimas Take a Stand Against Pollution," *CRITF News*, February 1990, pp. 2-3.

32. For a discussion of the Wisconsin cases, see Strickland, Rennard, Stephan J. Hertzberg and Steven R. Owens, "Keeping Our Word: Indian Treaty Rights and Public Responsibilities, A Report on a Recommended Federal Role Following Wisconsin's Request for Federal Assistance," April 16, 1990 (presently unpublished). At p. 10, Strickland, *et al.*, point out that although the cases refer to treaty rights, the rights predate the treaties. The courts recognize that the rights always belonged to the Anishinabe, and were reserved by them in the treaties. Some Anishinabe object to the term "treaty rights" since it implies that the rights were actually created by the treaties, rather than simply acknowledged within them.

33. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wisconsin*, 653 F. Supp. 1420 (1987), p. 1424.

34. Busiahn, Thomas, "The Development of State/Tribal Co-Management of Wisconsin Fisheries," in Pinkerton, *op. cit.*, pp. 170-80.

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36. Described in Strickland, *et al.* (*op. cit.*, p. 17), as well as Wisconsin Advisory Committee to the U.S. Commission on Civil Rights, *Discrimination Against Chippewa Indians in Northern Wisconsin: A Summary Report*, December 1989, p. 13 (unpublished).

37. *Lac Court Oreilles Band of Lake Superior Chippewa Indians v. State of Wisconsin*, 707 F. Supp. 10346 (1989), p. 1054.

38. Strickland, *et al.*, *op. cit.*, p. 1.

39. Great Lakes Indian Fish and Wildlife Commission, *Moving Beyond Argument: Racism and Treaty Rights*, Public Information Office, Odanah, WI, n.d., p. 6.

40. Center for World Indigenous Studies, "Study on Competing Sovereignties and the Anti-Indian Movement," in *Insights Into Racism*, a special supplement to *Masinaigan: Newspaper of the Great Lakes Indian Fish and Game Commission*, July 1988, p. 11.

41. *Masinaigan: The Chronicle of the Lake Superior Chippewa*, (1989 Spring Spearing Edition), Odanah, WI, p. 16.

42. Strickland, *et al.*, *op. cit.*, p. 10.

43. *Ibid.*

44. *Lac Court Orielles Band of Lake Superior Chippewa Indians v. State of Wisconsin* (1989), *op. cit.*, p. 1053. emphasizes the differences between the Wisconsin situation and that of the Northwest fisheries. Another difference involves the nature and implications of competing resource use in Wisconsin, particularly with regard to mining (Minewatch Briefing No. 5, June 1990).

45. Strickland, *et al.*, *op. cit.*, p. 36.

46. *Lac Court Oreille Band of Lake Superior Chippewa Indians v. State of Wisconsin* (1989), *op. cit.*, p. 1053.

47. "Officials Urged to Stop Pandering Prejudice," *Masinaigan* (1989), *op. cit.*, p. 6.

48. Wisconsin Advisory Commission (1989), *op. cit.*, p. 16.

49. Dale, *op. cit.*, pp. 67-70. A Supreme Court of Canada ruling, *Sparrow v. The Queen*, concerning aboriginal rights to a subsistence fishery on the Fraser River is pending. For case studies of co-management initiatives and programs in Canada, see several essays in Pinkerton, *op. cit.*, including Berkes, Fikret, "Co-Management and the James Bay Agreement," pp. 181-208; Doubleday, Nancy G., "Co-Management Provisions of the Inuvialuit Final Agreement," pp. 209-30; Marrell, Mike, "The Struggle to Integrate Traditional Indian Systems and State Management in the Salmon Fisheries of the Skeena River, British Columbia," pp. 231-48; and Richardson, Miles, and Bill Green, "The Fisheries Co-Management Initiatives in Haida Gwaii," pp. 249-61. Other sources of information on the Canadian situation include Marshall, Donald, Penny Alexander and Simon Marshall, "The Covenant Chain," in Boyce Richardson (ed.), *Drum Beat: Anger and Renewal in Indian Country* (The Assembly of First Nations/Summerhill Press, Ottawa, 1989, pp. 73-104); and Cohen, Faye G., and A.J. Hanson, *Community-Based Resource Management in Canada: An Inventory of Resources and Cases* (Man and Biosphere Program, Report 21, Canadian Commission for UNESCO, Ottawa, 1989).

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51. *Lac Court Oreilles Band of Lake Superior Chippewa Indians v. State of Wisconsin* (1987), *op. cit.*, p. 1429; *U.S. v. Bouchard*, 464 F. Supp. 1316, 1338 (1978).

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No. 2 Peter Elsass, director and anthropologisk - *Earth is our mother:* Arhuaco in Colombia and Bari in Venezuela (50 min. Denmark, 1987).

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This document, the second of two volumes, is a collection of articles concerning the problems and issues confronting the indigenous nations of North America. Loss of lands and resources at the hands of contemporary nation-states such as the U.S. and Canada, as well as cultural "assimilation" policies undertaken by these states, have placed Native North America in grave peril. Both the nature of these threats and the forms of native resistance are examined in this collection of essays.

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